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THE FEDERAL INCOME TAX

THE enactment of the income-tax law of October 3, 1913 marks a new stage in the history of American finance. As in the case of England with its first income tax of 1798, our Civil War income tax was avowedly a temporary measure; and just as the English income tax was reintroduced in 1842 in order to make good the loss in revenue occasioned by the repeal of the Corn Laws, so the American law was enacted to compensate for the loss of revenue due to the new tariff. The English tax, indeed, was not intended to be a permanent part of the revenue system, but the force of circumstances soon gave it that position. The American tax, on the other hand, was designed from the very outset as an integral and permanent part of the fiscal arrangements.

The chief argument which was responsible for the passage of the Sixteenth Amendment and for the enactment of the law was, as we have elsewhere pointed out,[1] that wealth is escaping its due share of taxation. Again and again in the course of the discussion attention was called to the fact that our federal system of taxes on expenditure puts an undue burden on the small man; and when the objection was made that the principle of ability to pay is recognized in state and local taxation, the ready answer was found that in actual practice our state and local revenue systems fail almost completely to reach those taxpayers who can best afford to contribute to the public burdens. It is true that some of the more extreme supporters of the income tax based their advocacy on the ground of opposition to the tariff

[1] Seligman, The Income Tax, 1911, p. 640.

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alone; but the more influential legislators did not tire of stating that, far from purposing to make an attack on wealth as such, their aim was solely to redress the inequality of taxation which was a predominant feature of the American fiscal system as a whole.[1]

In our consideration of the measure, it will be convenient first to consider what the law actually provides and then to call attention to its shortcomings. Under the first head the chief points are: who is taxed; what is taxed; how much is taxed; and how is the tax imposed? In other words, the main problems are: on whom is the tax levied; what is meant by income; what are the rates and exemptions; and what are the administrative methods pursued? Let us consider these in turn.

I. *Who is liable to the Income Tax?*

Under the provisions of the statute the tax is imposed upon the entire income of every American citizen, whether residing at home or abroad, as well as upon that of every person residing in the United States although not a citizen thereof. In the case of non-citizens of the United States residing abroad, the tax is assessed upon the income from all property owned, and from every business, trade, or profession carried on, in the United States. It will be noticed from these provisions that no attempt is made to avoid double taxation. Under the law, an American citizen living abroad and subject to an income tax there, or a resident alien who has already paid the income tax in his own country, is again subject to the tax here. It is to be noted, however, that the rigor of these provisions is somewhat abated by the clause, to be considered later, which virtually exempts the foreign holder of the bonds of American corporations. It is still to be regretted that the United States failed to lead in the movement to do away with this undoubted infraction of international justice.

In the second place, the law applies not only to individuals but to corporations. The income tax is payable by every cor-

[1] See especially the speech of Senator Borah who ascribes to the present writer the unmerited honor of responsibility for the impetus given to the income tax. *Cf. Congressional Record*, 63d Congress, 1st sess., pp. 4260–4261, Aug. 28, 1913.

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poration, joint stock company, or association, and every insurance company organized in the United States, with a few exceptions.[1] This part of the law contains provisions similar to those of the corporation or excise tax law of 1909. The chief differences between the two, apart from the matters which will be considered later under other heads, are that the former specific deduction of $5000 is no longer permitted and that corporations are now allowed to make a return for their fiscal year when this does not coincide with the calendar year. The objection that the taxation of both individual and corporation on the same income involves double taxation is sought to be met by the provision which permits individuals to deduct from their taxable income the amount of corporate dividends or other income on which the tax has been paid by the corporation. The American law, therefore, seeks to avoid double taxation by the same jurisdiction, while making no effort to prevent double taxation by competing jurisdictions.

II. *What is taxable income?*

As we have observed elsewhere[2] it is easy to say that income should be taxed, but it is not so easy to define what is meant by income. The law of 1913 states that net income

> shall include gains, profits, and incomes derived from salaries, wages, or compensation for personal services of whatever kind, and in whatever form paid; or from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property; also from interest, rents, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the

[1] The exceptions are: labor, agricultural or horticultural associations; mutual savings banks not having capital stock; fraternal beneficiary societies, orders or associations, operating under the lodge system; domestic building and loan associations; cemetery companies operated exclusively for the mutual benefit of members; associations operated exclusively for religious, charitable, scientific or educational purposes; business leagues, chambers of commerce, boards of trade, and civic leagues and organizations not organized or operated for profit.

[2] Seligman, The Income Tax, p. 19 *et seq.*

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income from but not the value of property acquired by gift, bequest, devise, or descent.

In this comprehensive definition several points are to be noticed: first, that no endeavor is made to introduce a new conception of income; second, that the idea of income as a regular and periodic return is accepted; third, that slight attempt is made to distinguish between capital and income; and fourth, that a somewhat more careful attempt is made to distinguish between gross and net income. Let us take up each of these points.

We have said that no endeavor is made to introduce a new conception of income. This new conception of income, to which the new law pays no homage, may be regarded from a double aspect: that of psychic or benefit income and that of disposable income. The problem of psychic income involves the question as to whether the conception of income is to be limited to that received in the form of money or whether it should be extended to include the satisfactions for which money stands. Since it is manifestly impossible to gauge in terms of money the varying degree of general satisfaction that individuals receive, the only practical question is as to whether that particular satisfaction which comes from living in one's own house and which can be fairly well measured in terms of rent, ought to be included in income. Suppose that A lives in his own house, worth $50,000, and pays perhaps $1000 in taxes and $1000 in repairs. B, who has had a precisely similar house, sells it for $50,000 but continues to live in it, at a rental of $5000. His position is virtually the same as that of A, because he gets $3000 as six per cent return on his $50,000 and saves the $2000 on taxes and repairs. Yet B now has to pay a tax on his $3000 additional income. It might be urged that in order to attain exact equality the net rental value of the residence ought to be included in A's income. It will be remembered that this rental value was so treated in the Civil War income tax. The framers of the present law, however, thought it wise to follow the almost universal European example and to confine the term "income" to the ordinary conception of actual money income.

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The other aspect of this new conception of income relates to the question of savings. Many years ago John Stuart Mill thought that he had discovered a flaw in the theory of the income tax. He pointed out that unless savings were exempted we should be imposing double taxation; that is, the tax would be imposed, first, on the amount of income actually saved and, secondly, upon the future income from that amount considered as capital. Although the fallacy of this contention was subsequently pointed out, it has remained for a recent Italian writer to take up the subject anew and to maintain that the only way of avoiding gross inequality in taxation of income is to exempt savings. It is remarkable, however, that at the same time that this theory was rehabilitated, a German author should have devised a precisely contradictory theory, namely, that all that should be included in the conception of income is the balance of receipts over expenditures, and that the term expenditures should comprise not only those incurred in securing the income but personal expenditures as well. Equal taxation hence involves not simply equality of income received but equality of surplus available. The new Italian theory would result in taxing nothing but expenditure; the new German theory would result in taxing nothing but savings.[1]

It is evident not only that these two theories are mutually contradictory, but that the wisdom of attempting to carry out either of them would be highly questionable. To levy a

[1] The Italian work is Intorno al concetto di reddito imponibile e di un sistema d' imposte sul reddito consumato, published as a memoir of the Turin Academy of Sciences in 1912 by Professor Luigi Einaudi. The German work is Die Besteuerung nach dem Ueberfluss (nach der Ersparnismöglichkeit), von Bürgermeister H. Weissenborn in Halberstadt, 1911. The Italian book has given rise to a discussion carried on in a series of articles in the *Giornale degli Economisti* for 1912 and 1913. The argument rests on the distinction between "earned" and "realized" income propounded by Professor Irving Fisher in 1906 in The Nature of Capital and Income. This distinction has, however, found little acceptance among American economists, and its validity has been vigorously denied, especially from the standpoint of its applicability to taxation. See the review of Professor Fisher's book by Professor H. R. Seager in the *Annals of the American Academy of Political and Social Science*, vol. xxx, p. 175 (1907); and the discussion on the subject "Are Savings Income," by Professors Fetter, Daniels and Robinson in *Papers and Discussions of the Twentieth Annual Meeting of the American Economic Association*, at Madison, Wis., Third Series, vol. ix, no. 1 (1908), pp. 48–58.

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tax solely on expenditure, even if the expenditure were limited to so-called luxuries, would ultimately bring us back to the evils of the mediæval system from which modern progress has extricated us. On the other hand to lay a burden only on savings or the possibility of savings would controvert some of the most firmly established principles of economic progress. It must be said, therefore, that the framers of the new law were well-advised in refusing to be led astray by either of these recent vagaries.

The second point to be noted with reference to the theory of income implied in the new federal law is its attitude toward irregular receipts. It will be remembered that in the law of 1894, in contradistinction to the well-nigh universal practice abroad, inheritances were taxed as income.[1] The general view, as explained elsewhere,[2] is that income consists only of regular and periodic returns, irregular returns in the shape of inheritances being reached by the inheritance tax. In the new law this conception is adopted, although no additional tax on inheritances is imposed by the federal government. As inheritances are usually reached by the separate states, however, and as it is not improbable that the federal income tax may before long be supplemented by a federal inheritance tax, there is much to be said for this provision of the act. The law of 1913, moreover, is still further and favorably distinguished from that of 1894 by excluding from the conception of income, property acquired by gift *inter vivos*.

The third element to be considered in the conception of income is the distinction to be drawn between capital and income. The two chief problems under this head are the treatment of profits from sales of property, and the disposition made of certain receipts of life-insurance companies.

In respect to the former, the law states that taxable net in-

[1] Senator Cummins must have overlooked this when he stated: "I do not think that there is any man in America who would contend that . . . a devise or bequest of property . . . is income. I never heard of it being so construed, and it is not possible that it could be so construed." *Congressional Record*, p. 4264, Aug. 28, 1913.

[2] Seligman, The Income Tax, p. 20.

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come comprises "gain, profits and income derived from . . . dealings in property whether real or personal . . ." It is obvious that in the case of persons engaged in the real-estate or bond business, profits from the sales of real estate or of securities are included in taxable income. The question arises, however, whether the purchaser of a piece of property who after the expiration of several years sells it at an enhanced price ought to regard the difference as a part of his income in that year. If the letter of the law be followed, this is the obvious result. The injustice, however, of such a procedure is apparent from the fact that there is no provision made for deducting losses arising from a similar transaction. Of course a real-estate dealer in figuring up his income for the year can set off losses on some transactions against profits on others. But an ordinary individual who sells at a loss a piece of real estate that he has held for a number of years has no way of setting off that loss against profits from other sources. It is simply a diminution of his capital. Why, then, should any possible profit derived from a similar transaction be considered as income rather than accretion to capital?

It will be remembered that in the original income tax such profits were counted as income. This however, created such dissatisfaction that the law of 1867 limited such profits to those from sales on real estate purchased within two years.[1] In the discussion of the present bill Mr. Cordell Hull, its framer, stated: "In construing all these laws . . . unless the unearned increment is expressly made income, it is not considered income in any sense of the word, but simply increase of value or capital."[2] When pressed still further, he added: "My judgment would be that as to the occasional purchase of real estate not by a dealer or one making the buying and selling a business, this bill would only apply to profits on sales where the land was purchased and sold during the same year."[3]

As this section was adopted in the light of Mr. Hull's expla-

[1] Seligman, The Income Tax, p. 512.

[2] *Congressional Record*, April 26, 1913.

[3] Such a provision, it will be remembered, was contained in the law of 1864.

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nation, it is not unlikely that it will be so interpreted as to carry out the evident intention of its framers. If so, the same rule will apply also to profits from the sales of securities or other personal property. This would seem to be a fairly satisfactory solution of an undoubted difficulty.

The other aspect of this problem is connected with insurance and especially mutual life insurance companies. The payments from life insurance companies to the policy holders include, as is well known, death claims, annuities, endowments, surrender values and so-called dividends. Since, however, a part of these payments is made from premiums received it is clear that this involves merely a return of capital. In the heated discussion that took place on this topic it was pointed out that a large part, at all events, of the dividends ought really not to be included in income. An amendment to the bill was finally adopted, whereby it was provided that life insurance companies should not include as income "such portions of any actual premium received from any individual policy holder as shall have been paid back or credited to such individual policy-holder or treated as an abatement of premium of such individual policy holder within such year." And in the same way mutual fire and marine insurance companies are not compelled to include refunds of premium deposits to policy holders in their taxable income, a provision of great importance in the case of so-called "factory mutuals" which pay to their policy holders "dividends" amounting in some cases to ninety or ninety-five per cent of the premium received. It is fortunate that this amendment prevailed, as in a recent decision of the Supreme Court it has been held that the inclusion of such "dividends" in the income of corporations under the corporation tax law of 1909 was invalid. The elimination of "dividends," however, does not dispose of all the difficulty, as there still remain some so-called earnings of insurance companies which are really nothing but a return of capital to the policy holders.[1] Mr. Hull was

[1] The objections of the insurance companies are presented in a series of memoranda printed in Tariff Schedules, Briefs and Statements filed with the Committee on Finance, United States Senate.—Income Tax and Customs Administration (Washington, 1913). See especially pp. 1947–1986, 2119–2126. This whole subject is well

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quite emphatic in his statement that there was no intention of taxing capital rather than income, but he was not thoroughly clear in his own mind as to the exact distinction to be made, and he maintained that the accounts of the insurance companies were not so kept as to permit the legislature to distinguish between the two conceptions.

The fourth difficulty connected with the concept of income is presented in determining the deductions to be made from gross income in order to arrive at net income. With respect to certain of these items, there is no controversy. Such are the provisions of the law for deducting necessary business expenses, interest on personal indebtedness, losses actually sustained during the year including worthless debts charged off, and a reasonable allowance for exhaustion, wear and tear of the property arising out of its use in the business (not exceeding in the case of mines five per cent of the gross value of the year's output at the mine). Nor is there room for dispute as to the propriety of the permission to deduct from gross income of individuals, not only dividends from corporations which have paid a tax on their net income but also any income on which, as will be explained later, the tax has been withheld at the source. The real difficulty in the matter, apart from the question of actual fact as to the difference between repairs and permanent improvements, relates to the question of taxes and of interest on corporate debts.

As to the former, the law permits deduction for all taxes, not including, however, in the case of individuals, assessments for local benefits. Why this deduction should be allowed is not clear. It might indeed be claimed that so far as taxes on business are concerned, this ought to be put on a par with

treated by K. K. Kennan in a monograph entitled The Federal Income Tax in its Relation to Life Insurance Companies (Milwaukee, 1913).

The accountant's point of view is summed up in W. A. Staub, Income Tax Guide (1913), p. 50, as follows: "Only the income derived from the investment of premiums between the time they are received from the policy holders and the time they are returned to them or their beneficiaries in the form of death claims, annuities, endowments, surrender values, 'dividends,' less the expense of conducting the business, represents real income derived from the amounts placed in a company's hands by the policy holders for insurance purposes."

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other outlays incurred in order to secure a net profit. But where the income is derived from other sources than purely business transactions, the legitimacy of the deduction seems questionable. It is to be conceded, however, that herein lies a real difficulty in the theory of income.

In considering the deduction of interest on corporate debt, it should be remembered that the theory of corporate indebtedness differs, as we have elsewhere pointed out,[1] in some important respects from that of individual indebtedness. In the case of the individual, taxable property consists in the surplus above indebtedness, and the taxable income consists in the corresponding surplus of receipts. Capital stock of a corporation, however, usually represents only a portion of the property, while the remainder is represented by the bonded indebtedness. Strictly speaking, indeed, the proper distinction is not between corporate and individual credit, but between production and consumption credit. In the case of corporations, however, while debts are sometimes contracted to meet pressing exigencies and may thus in a way be considered a kind of consumption credit, mortgage bonds, at least, are almost exclusively issued in order to provide capital. Economically speaking, the corporate capital consists of the bonds and the stock. Theoretically, therefore, the income from interest on corporate bonds ought not to be deducted. As a matter of fact, it is not so deducted in European income-tax laws. In the corporation tax law of 1909, however, interest on indebtedness was deducted, but only on an amount of debt not exceeding the capital stock. In the present law we find a compromise. Interest paid is allowed as a deduction from income on an amount of indebtedness not exceeding one-half the sum of the corporation's interest-bearing debt and its paid-up capital stock. Thus it will be seen that the new tax is more favorable to the corporations than was the excise tax. The compromise, however, is entirely arbitrary. Either there should have been no deduction at all, or the deduction should have been permitted

[1] Seligman, Essays in Taxation (8th edition, 1912), pp. 106–107; The Income Tax, p. 513.

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on all the indebtedness which might be regarded as a result of purely consumption credit.

Another point, and one in which corporations appear to have just cause for complaint, is the disappearance of that provision of the law of 1909 which permitted corporations to deduct from gross income the dividends received from the stock of other corporations held by them. The result of this disappearance will be a great burden on holding companies, as the same income will be taxed once to the subsidiary companies and again to the parent company. The reason for this change was obviously to interpose obstacles to the continuance of holding companies. While this is not the place to express any opinion as to their desirability in general, it is quite clear that in the case of railroads at least, some form of holding company of non-competitive lines may be entirely compatible with the best public interests; and in any event the attempt to combine fiscal and prohibitive ends in the same measure is of doubtful wisdom.

III. *The Tax Rates*

In discussing the question of tax rates the two chief problems are those of exemption and of graduation.

The most important point to be noted under the head of exemption is the fact that the tax applies to individual incomes only when they exceed $3000. In the law of 1894, it will be remembered, the exemption was placed at $4000 and in this bill, as originally drafted, the exemption was also kept at the higher figure. In the course of the discussion, however, and partly as a concession to the feeling that the limit was excessive, it was reduced to $3000, with additional exemptions of $500 or $1000 for children. In the final draft, while the figure of $3000 was retained, the exemption for children was eliminated and was replaced by an additional exemption of $1000 for a married couple. A total exemption, however, of $4000 only is permitted in the case of aggregate income of husband and wife when living together. It is to be noted, moreover, that the exemption applies to the first three or four thousand dollars respectively of any amount of income; that is to say, three or four thousand dollars respectively are always to be deducted from the net income, in order to reach the taxable income.

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In the discussion of the law, several attempts were made to reduce the exemption to a lower limit. It was repeatedly pointed out, however, that this exemption did not mean so much the minimum of subsistence, as a minimum of comfortable existence according to the desirable American standard of life. An American family of from three to five children living in decent comfort, and desirous of giving the children a college education would, it was maintained, need all of $4000, or in the case of a widow, certainly all of $3000, for meeting the necessary family expenses. It was further urged that the recipients of smaller incomes are already bearing more than their share of the burden, through the federal indirect taxes, and that this comparatively high exemption would only redress the inequality. Finally it was argued that the administrative advantages of the high exemption in averting needless expense and endless complications, such as are found in the English system, would far outweigh any objections to the higher exemption. While, however, these considerations were prominent in the minds of the framers of the measure, there is little doubt that the controlling reasons for so high an exemption were primarily political. One of the congressmen ingenuously asked, in reply to a proposition to reduce the exemption; "Does the gentleman not think it would defeat every member who would vote for this amendment if the fact were known at home?"[1] And another member said:

I venture the assertion that if Congress at the first opportunity which it has had of levying a direct tax upon the people without apportionment, should levy a tax which would fall upon every citizen of the land, that tax would not stay upon the statute books longer than the first election which followed the first call of the tax collector.[2]

In justice, however, to the majority, we must quote the statement made by Mr. Murray, of Oklahoma:

There are those who would say that we should begin at $1000, in lieu of $4000. They forget the principle upon which this tax is founded, and that is that every man who is making no more than a living should

[1] *Congressional Record*, p. 1215, May 6, 1913. [2] *Ibid.*, p. 1218.

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not be taxed upon living earnings, but should be taxed upon the surplus that he makes over and above that amount necessary for good living. We also recognize the assumption that $4000 will reach the highest grade of good living. . . . The purpose of this tax is nothing more than to levy a tribute upon that surplus wealth which requires extra expense, and in doing so, it is nothing more than meting out even-handed justice.[1]

The other exemptions may be passed over rapidly. The salaries of the present President of the United States and of the federal judges now in office are exempt out of regard for the constitutional provision prohibiting any diminution of their compensation while in office. This, however, does not apply to future presidents or federal judges. The salaries of all officers and employees of a state or a political subdivision thereof, and the interest on bonds or other obligations of a state or any political subdivision thereof, are also exempted. It was indeed claimed that according to the contention of former Governor Hughes, the Sixteenth Amendment empowered the federal government to levy such taxes. The framers of the bill, however, while specifically disclaiming any opinion on this point, maintained that, as long as there was any doubt, no opportunity should be given to contest the constitutionality of the law for this reason. The provision therefore prevailed, although it was emphatically asserted that from the standpoint of equality of taxation such an exemption was illegitimate. It is, in our opinion, not at all unlikely that at some future time this exemption will be removed by special amendment to the statute, the constitutionality of of which can then be tested.

The exemption of interest on bonds or other obligations of the United States or its possessions did not arouse any comment. This was partly due to the fact that the federal debt is so small and is so largely held by national banks. If the time should come when the national debt, in the hands of individuals, should again assume large dimensions, it is not unlikely that we shall have a controversy here comparable to the one that has been responsible for the recent fall of the French ministry.

[1] *Congressional Record*, p. 1219.

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The issue will then be the equality of taxation versus the maintenance of the national credit.

Finally, it is to be noted that the exemption of $5000 accorded to corporations in the law of 1909 is now eliminated.

The consideration of tax rates involves not only the question of exemption, but that of graduation. It is significant that the principle of progressive taxation evoked almost no discussion. The legitimacy of the theory was taken for granted, and in the few cases where it was mentioned, it was assumed to be a corollary of the theory of ability to pay. This shows the development which has taken place since the discussion of the law of 1894. In considering the question of graduation, only two difficulties confronted the framers of the bill. The one was how to make a workable system of progressive taxation harmonize with the administrative methods employed; the other, how to oppose with success the demands of the radicals.

The former difficulty is connected with the principle of stoppage at source, to be discussed below. It is clear that if a tax is paid at the source by the income payer, rather than by the income recipient, it is not easy to introduce a graduated scale. The bonds of a corporation, the tax on the income of which is withheld by the corporation, may be owned by a person of very small or of very large total income.

This problem had, however, recently been solved in England, and a similar solution was adopted in the bill which passed the Chamber of Deputies in France a few years ago, and is now pending in the Senate.[1] In England a uniform rate is imposed upon all tax-payers, and is assessed on the principle of stoppage at source. This remains the back-bone of the tax. Then on all individual incomes above a certain figure, a so-called supertax is levied upon the income as a whole. So in the French bill, the uniform tax levied according to the stoppage-at-source principle is supplemented by a "complementary" tax levied upon the entire income. The same plan has been adopted in the new American law. The uniform tax levied upon all incomes, primarily by the method of stoppage at source, is called

[1] Seligman, The Income Tax, (1911), p. 324.

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the normal tax, and is assessed at the rate of one per cent. The extra tax is called the additional tax or the surtax and is assessed on the entire income of individuals, according to a graduated scale. The advantage of this ingenious scheme is that the constituent parts of the income of any individual will be reached in large measure by the normal tax, and in such a way that the government will be able to ascertain the facts. The returns made by individuals for the additional tax can, to a considerable degree, thus be checked up, and the fiscal interests of the government be protected. This protection is, however, not complete; for, as we shall see, the principle of stoppage at source does not apply to all incomes within the United States, and applies only in an imperfect way to incomes received abroad. To a very large extent, however, the protection is undoubted. Thus it may be said that the old problem of the incompatibility of graduated taxation with stoppage at source has been attacked with a fair prospect of success.

The other difficulty with which the framers of the bill had to cope was the danger of an exaggerated application of the progressive scale. In the original bill, the clause relating to the "additional" tax was so framed as to impose one per cent on incomes from $20,000 to $50,000, two per cent on incomes from $50,000 to $100,000, and three per cent on incomes above $100,000. In the course of the discussion, however, many amendments were introduced calling for much higher scales. It will suffice to mention the plan of Mr. Copley, who suggested a scale rising to no less than sixty-eight per cent on incomes over $1,000,000, a proposition so manifestly extravagant that it was voted down by a large majority. Another rather extreme proposition was subsequently advanced in the Senate. Senator Wiliams disposed of it with the statement that "the object of taxation is not to leave men with equal incomes after you have taxed them."[1] The general feeling was, however, that the graduated scale contained in the bill was not high enough. Senator LaFollette proposed a scale which

[1] *Congressional Record*, p. 4225, August 27, 1913. As to the leave-them-as-you-find-them theory of taxation, see Seligman, Progressive Taxation (2d ed, 1908), p. 231.

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ran up to ten per cent. Senator Bristow suggested a somewhat more moderate scale and scouted the idea of possible future complications. As a result of the discussion the Finance Committee of the Senate saw that some concession was inevitable. Under the law as it was finally enacted, the rates of the "additional" tax are as follows:

PER CENT	ON AMOUNT EXCEEDING	AND NOT OVER
1	$20,000	$50,000
2	50,000	75,000
3	75.000	100,000
4	100,000	250,000
5	250,000	500,000
6	500,000	

The maximum rate of the income tax as a whole, therefore, under the new law, is somewhat under seven per cent. This is somewhat lower than either the English maximum (1*s.* 8*d.* on the £), or that of the recent German *Wehrsteuer* (eight per cent on incomes over half a million marks).[1]

IV. *Stoppage at Source*

The provisions in the new law which deal with the methods of assessment and collection involve a fundamental departure from the theory of all preceding income taxes in the United States. As has been frequently pointed out, the two chief types of income tax are the personal or lump-sum tax, where every one is compelled to make a return of his entire income from whatever source derived, and the stoppage-at-source tax, the theory of which is that it should be collected from the person or agency paying the income, rather than from the individual who receives it. The argument in favor of payment at source is the double one of protecting the honest taxpayer, and of safeguarding the interests of the treasury. Whatever may be true of a country like Germany where the administrative and political conditions are unique, there is little doubt

[1] As to the German tax, see F. Stier-Somlo, Wehrbeitrag und Besitzsteuer. Die Reichssteuergesetze vom 3 Juli, 1913.

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that a purely personal lump-sum income tax, resting primarily on the declaration of the individual, would be as much of a failure in the United States as was the original income tax in England or the American income tax in the years subsequent to the Civil War, and as are those parts of the income tax in Austria, Italy and Switzerland, which rest upon the same principle. It was to avoid these evils, that England adopted the principle of stoppage at source to a certain extent at least, and that some other countries have in a minor degree followed this example. It was reserved, however, for the United States to apply the principle in a more thorough-going fashion than is the case anywhere else.

The law provides that "all persons or firms, co-partnerships, companies, corporations, joint-stock companies or associations, in whatever capacity having control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits, and income of another person, subject to tax" are required to deduct and withhold the annual tax of one per cent from all "interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments or other fixed or determinable annual gains, profits and income of another person exceeding $3000 for any taxable year." In the case of payment of interest on bonds and mortgages or of trusts or other similar obligations of corporations, as well as in the case of collections of interest and dividends on foreign bonds and stocks not payable in the United States, the tax is to be deducted on all sums irrespective of whether or not the payments amount to $3000. The obligation to withhold the tax is not applicable to three cases. First it does not apply to the dividends on the stock of corporations (except foreign corporations not doing business in the United States) for the reason that all such corporations are subject to the tax on their net income, irrespective of whether they pay out this income as dividends or allow it to accumulate as surplus and undivided profits. Secondly, the obligation to withhold the tax does not apply to the interest on bonds, mortgages, equipment-trust, receivers' certificates or similar obligations of which the bona fide owners are citizens of foreign countries and residing abroad. Thirdly, it does not

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apply to the payments to a corporation, the reason for this obviously being that all corporations are required to file a complete return of all of their income, and that the books of the corporation are open to inspection by the revenue authorities.

It will be observed that the provision for payment at source is exceedingly broad. With the exceptions mentioned it applies virtually to everyone through whose hands there may go money or money's worth belonging to anyone else, provided that the payments are "fixed or determinable." If the income is not fixed or certain or payable at stated periods, or if it is indefinite or irregular either in the amount or the time at which the income is paid, the provision does not apply. A failure to deduct the tax makes the individual or corporation personally liable. Moreover, anyone who collects foreign payments of interest or dividends by means of coupons, checks or bills of exchange, must procure a license from the commissioner of internal revenue, and give bonds. All licensees must keep records open to inspection by the government officials, and must file monthly with the district collector of internal revenue a list of the names and addresses of persons from whom any items have been received, the amounts of tax deducted, and the sources thereof. Failure to conform to these regulations involves a fine not exceeding $5000, or imprisonment not exceeding one year.

In connection with this general problem of stoppage at source, two chief points deserve consideration: first, is the principle itself sound; and second, what administrative regulations have been issued to facilitate the execution of the law?

Among the criticisms directed against the principle of stoppage at the source, the first to be noted is the contention that there is no warrant for imposing upon the so-called "withholding agents" the expense connected with the withholding of the tax and the rendering of the accounts to the government. In this contention there seems to be some merit. It must be remembered, however, that in so far as the withholding agents are corporations, they all enjoy a privilege which is not granted to corporations in Europe, namely, that of deducting interest on debt from their gross income. Apart from this consideration,

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however, it would seem proper for the government to allow some compensation to withholding agents for the expense involved. This might be done by amending the law, or perhaps by a mere administrative provision. In any event, the matter seems not sufficiently important seriously to compromise the principle of the law.

The next criticism is more weighty. It is well known that since the beginning of the income-tax agitation in the nineties, almost all of the American railroads, and many of the larger industrial corporations, have issued their bonds with the so-called "tax-free" clause; that is, the corporations have obligated themselves to pay any taxes that might be imposed upon the bonds or coupons. The consequence is that as the present law compels these corporations to withhold the income tax on the coupons, the corporations under the tax-free clause have no option but to pay the tax themselves. As a result, the government is hitting the wrong man. It seeks to impose the tax upon the bondholder; in effect, it mulcts the corporation. Under the present situation, the tax due by such corporate bondholders is paid by the stockholders.

The framers of the bill were well aware of this complication. They accordingly introduced a section rendering void any tax-free provision in corporate bonds to be issued in the future. They did not, however, deal with existing bonds, as they feared thereby to expose the law to a charge of unconstitutionality. It may be stated, indeed, that so far as bonds to be issued in the future are concerned, it makes little difference, from the economic and fiscal points of view, whether the tax-free provision is contained therein or not. The only result of a tax-free provision in future bonds would be that the bonds would sell at a higher price than would otherwise be the case, the tax being capitalized into a difference in the market price. So far as the corporation is concerned, it makes no essential difference because the corporation will sell its tax-free bonds at a price sufficiently high to compensate it for the payment of the annual tax; and so far as inequality of taxation among individuals is concerned, it also makes no difference, because the purchasers of tax-free bonds, instead of paying the income tax on the

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coupons, will capitalize this annual tax into the additional price they pay for the bonds. This consideration, however, does not affect the thousands of millions of existing corporate bonds where the result of the present system is to impose an additional burden on the corporation and to exempt the security holders.

It was a consideration of this nature which led the representatives of the withholding corporations to suggest during the pendency of the discussion an alternative scheme.[1] They conceded that the chief object to be attained by the payment-at-source method ought to be kept in view, namely, the prevention of tax evasion. They contended, however, that the needs of government in this respect would be met by the receipt of information as to details of payment, ownership, addresses, etc.; and they declared themselves quite ready to present such reports. This suggestion was not entirely novel. Such reports form a part of a system originally introduced by Italy when it imposed upon the corporations the duty of supplying the government with certain facts. For this scheme the present writer suggested the name of "information at source," a name that was at once adopted as a convenient appellation. The framers of the bill acknowledged its legitimacy and were willing to substitute in part at least, information at source for payment at source. The doubts of the majority of the Conference Committee, however, as to the efficacy of the proposed substitute in completely accomplishing the desired results were not entirely dispelled, and the principle of stoppage at source was therefore retained.

The validity of these doubts must indeed be acknowledged, in part at least. To the extent that they are justifiable, it must be conceded that the Conference Committee was correct in refusing to permit any general acceptance of the information-at-source principle. Yet in so far as tax-free bonds are concerned, there is little doubt that the information-at-source method would have been an acceptable compromise between the impracticable lump-sum personal tax and the stoppage-at-source scheme,

[1] See the memoranda of the Guaranty and other Trust Companies, and of Professor Bullock in Briefs and Statements (quoted above, p. 8), pp. 2004–2013 and 2071–2075. The former memorandum was also separately published under the title Income Tax Bill. Memorandum on behalf of certain Trust Companies.

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which virtually results, for the present at least, in some inequality. It must be remembered, however, that with the passage of every year and the gradual disappearance of tax-free bonds, the objections will diminish. Our conclusion must therefore be that, with this one exception, the stoppage-at-source principle is defensible, but that the information-at-source method deserves serious consideration as a possibility of the future. At all events, the elimination of the old lump-sum personal income tax constitutes an undeniable advance.

The other phase of the stoppage-at-source question is that of the administrative regulations issued to enforce the law. The Treasury Department, which was given great latitude, has struggled with the difficult task of interpreting some obscure passages in the law and making them workable. In the first place, the Bureau of Internal Revenue has provided for the attachment of certificates by all withholding agents. In case of bonds and similar obligations, it has been settled that if the debtor corporation or its fiscal agent does not deduct the tax, the first bank, trust company, banking firm, individual or collecting agency receiving the coupons for collection or otherwise shall withhold the tax and attach a certificate stating for whom the tax is deducted, the person from whom the coupons were received, the bonds from which the coupons were cut, and the amount of interest. All such certificates, which may be signed by a bank or other responsible collecting agency, as well as those prepared by persons licensed to collect foreign incomes, must be filed with the district collector by the 20th of the following month. So far as income from sources other than corporate interest is concerned, the situation has been rendered much simpler by a regulation that the tax shall not be withheld until the aggregate of the payments during the year amounts to more than $3000. The tax is then to be paid upon this aggregate unless the person to whom the income is payable files with the withholding agent a claim for the three or four thousand dollar exemption, respectively, in which case the tax is to be withheld only on the excess above the exemption claimed. The tax payer may present his claim for exemption to the revenue officers, rather than to the withholding agent.

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In a great majority of the cases, of course, this will be done, because in order to take advantage of the deductions, the tax payer must file a statement of his annual income from all other sources. After the tax has once been withheld, any one may subsequently pass on the money involved without incurring any liability for further withholding or payment. It must also be remembered that the obligation on the part of the withholding agent to deduct the tax does not apply where the payment is made to corporations. Owing to this provision, as well as to the regulation governing the $3000 exemption, most of the complications which had been anticipated so far as concerned rentals of real estate or the interest on real-estate mortgages, will be effectively removed. There are still left, however, not a few minor administrative difficulties to be overcome.

Finally, it is to be stated that the law took effect, so far as the date of taxable income is concerned, as of March 1, 1913. Manifestly, however, the provision requiring payment at the source could not be made retroactive, and was enforced only from November 1st. Were it not for the fact that the treasury regulations provided that during November and December, 1913, the tax was to be withheld only on payments aggregating $3000 during these two months, the confusion which recurred when the law went into effect would have been far greater than it actually was.

V. *Other administrative features*

There remain for consideration some of the miscellaneous administrative provisions of the law.

Of these, perhaps the most interesting is that which provides for secrecy. The law states that it shall be unlawful for any officer or employee of the United States to divulge any detail set forth in any income return, nor shall he permit any details to be seen or examined by any person except in the manner to be mentioned; nor shall any person print or publish in any way any detail connected with the income returns. The returns of corporations, however, constitute public records, open to inspection upon the order of the president, under rules and

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regulations to be prescribed. It is further provided (and this is due to Senator LaFollette) that the proper officers of any state imposing a general income tax may, upon the request of the governor thereof, have access to such corporate returns. The secrecy imposed in the case of individuals is in bold contrast to the publicity of returns under the earlier Civil War income-tax acts.

Every individual with an income exceeding $3000 during the preceding calendar year must file a return on or before March 1st under oath or affirmation, with the collector of the internal revenue for the district in which he resides or has his principal place of business. The only exception is in the case of individuals whose income does not exceed $20,000, all of which has been derived from corporate dividends or from sources where the tax has already been withheld.[1] Neglect or refusal to make the returns involves a penalty of from $20 to $1000, and an increase of fifty per cent in the tax. A false or fraudulent return made with intent to evade the tax is punishable with a fine not exceeding $2000, or imprisonment not exceeding one year, or both, together with the costs of prosecution. The commissioner of internal revenue is empowered to amend the return upon the discovery of fraud at any time within three years after it is due. It is to be observed that although the return is called for from the individual, the assessment itself is to be made by the commissioner of internal revenue or his assistants. It is only when no return has been rendered, or when a return is rendered which in the opinion of the collector is false or fraudulent or contains any undervaluation or understatement, that the collector is permitted to proceed further. He may then summon the individual or any other person having possession of the books, or any person that he deems proper, to appear before him, to produce the books, and to give testimony, or to answer interrogatories under oath "respecting any possible liability to tax or the returns thereof." The tax is payable on or before June 30th.

[1] For the year 1913 the returns are only to include the income that has accrued between March 1st and December 31st, after deducting five-sixths of the statutory exemptions and deductions.

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Corporations have a choice of two methods. If they file a return for the calendar year, they are notified of the tax assessed against them by June 1st, and the tax must be paid by June 30th. If, however, they prefer to file a return for a fiscal year which does not coincide with the calendar year, they must pay the tax within one hundred and twenty days after the date upon which they are required to file a return. Taxes remaining unpaid after the due date and ten days' additional notice from the collector, are increased five per cent with interest added also. Corporations neglecting or refusing to make returns at the stated time, or making a false return, are liable to a penalty not exceeding $10,000. Moreover, in the case of refusal or neglect, the return is increased fifty per cent, and in case of fraud, one hundred per cent. Any officer of a corporation who makes a false or fraudulent return is subject to a fine of $2000 or imprisonment for one year or both. It will be seen, therefore, that the provisions for collection of the tax are not only ample but rigid.

VI. *Conclusion*

The income tax law of 1913 is not perfect. It is not in all respects well drawn, and there are not a few obscure points which will require interpretation by the administrative authorities or the courts. Moreover, it contains defects of omission as well as of commission.

Many of the criticisms urged both before and after the passage of the law are indeed not valid. Thus it was maintained that if an income tax should be imposed, there would surely be discrimination against New York and the other wealthier states. As a matter of fact, there is no discrimination in the present law except that which arises from the fact that New York is wealthier than other states, and therefore ought to pay a larger sum. No one would think of protesting against the justice of customs duties because as a matter of fact so large a proportion is collected from the port of New York. It is interesting to notice that in the year 1871, the year before the abolition of the Civil War income tax, when residents of New York state paid slightly over thirty-nine per cent of the entire tax, they

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paid actually more than that percentage of other federal taxes —for instance, forty-one per cent of the tax on gas, and forty-two per cent of the taxes in Schedule A. In 1867, indeed, New York paid no less than fifty-six per cent of the tax on sales. If New York pays more than thirty-nine per cent of the present income tax, it will simply mean that there has been in the intervening years a greater concentration of wealth in that state.

In the same way the charge that the tax is socialistic can be brushed aside. It is true that we now have a graduated scale of taxation, but the extremes of graduation are lower than in other countries. It is also true that the exemption is placed at a figure which may seem excessive. It must be remembered, however, that this is, on the whole, in accord with the conception of taxation that has long obtained in America. For many decades the great mass of state and local revenues has rested on the basis of the general property tax, the accepted principle of which is to exempt all those who have not accumulated property. Now if it is true, as is claimed, that the recipients of an income of $3000 ordinarily spend the greater part of their income and lay by little or nothing, the exemption of $3000 from an income tax would amount to the usual exemption involved in the imposition of a general property tax. For if a man saves nothing from a $3000 income, he will not be subject to a property tax. Whether or not it is accurate that the recipients of $3000 income ordinarily spend all of it, it is probable that with the rising standard of life in this country, much, if any, saving is unlikely; and to the extent that this is true, the argument for a comparatively high exemption seems to be defensible. Those who urge that there should be no exemption at all or a very slight one, forget that they are running counter to the whole theory of the general property tax which has hitherto been at the basis of American fiscal policy. The $3000 exemption, then, does not involve any serious departure from accepted principles of fiscal justice.

The real defects of the income-tax law are entirely different. In the first place, no attempt has been made to introduce a differentiation of taxation; that is, to distinguish between the rate on earned and unearned incomes. This scheme was in-

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deed suggested during the discussion in the shape of a formal amendment.[1] But its full import seems to have been misunderstood, and in the haste of the elaboration of the bill, the matter was allowed to drop. It must be remembered, indeed, that the question of differentiation of taxation was agitated in England for half a century; but it is also true that differentiation was finally accepted before graduation—the one in 1907, the other in 1910. In our present law, on the other hand, the principle of graduation has been accepted, but it still remains to introduce that of differentiation. It is to be hoped that this will not long be delayed.[2]

The second defect in the law is the failure to introduce proper administrative methods, so far as ordinary business incomes are concerned. The principle of stoppage at source is not applicable to most of these. It is well known how England has had to struggle with Schedule D. Instead, however, of utilizing the lessons which can be drawn from the English experience, the framers of our law have preferred to leave the matter alone on the ground that too much must not be attempted at once. It remains to be seen whether a simple declaration by the tax payer, even as amended by the government officials, will suffice to prevent a repetition of the enormous frauds and evasions which were common to our income-tax laws of the Civil War period. It is indeed true that the far greater part of the tax is to be collected according to the principle of stoppage at source; but there seems to be no good reason why such an enormous loop-hole should have been left open in the case of ordinary business returns.

These, however, are the only important criticisms to be urged against the law. So far as the stoppage-at-source principle is concerned, we have seen that in the main it is not only defensible, but constitutes a distinct advance, even though it might have been desirable to substitute, in part at least, the information-at-source principle.

[1] By Senator Crawford, approved by Senator Cummins. *Congressional Record*, pp. 4233, 4280, Aug. 27, 29, 1913.

[2] Senator Williams mentioned this as well as other possible improvements in a speech beginning: "What we are doing with this income tax is a totally different thing from what we hope to do some day." *Ibid.*, p. 4189.

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Taking it all in all, the law must be pronounced an intelligent and well-considered effort. It will need amendment in detail to make it completely equitable in principle, and fairly smooth in operation. But when we compare it with our preceding ventures in this field, we may be proud of what has been accomplished. Indeed, the law may be declared to be in many respects superior to any other existing income-tax law. With the passage of time, and with the settlement by economic science of some of the moot points in the theory of income, it may be expected that the law will gradually win its way to public recognition.

Of the wider question involved as to the probable future of the federal income tax and its position in the whole field of public revenue, this is no place to speak. The gradual development of income taxes in some of our states and the feeling that a large revenue from personal property or its income is needed by our states and municipalities rather than by our federal government, are weighty considerations that must not be overlooked. It is interesting to observe that even during the discussion of the present law the proposal was made that a part of the proceeds, at least, be returned to the states. Had not this suggestion emanated from a source that was undisguisedly hostile to the very idea of a federal income tax, it is not impossible that it would have received fuller recognition.[1] Whatever the future may have in store as to the interrelations of federal and state revenue, it is probable that the income tax has come to stay. Let us be thankful that it has come in such a shape, and let us look forward with hopeful anticipation to a future in which the income tax, improved and amended, will play its important part in bringing about greater justice in American taxation.

EDWIN R. A. SELIGMAN.

[1] According to the proposition of Senator Dillingham, who presented a joint resolution introduced into the Vermont legislature, the entire proceeds were to go to the states. *Congressional Record*, Sept. 8, p. 4881. In Mr. Copley's scheme for a highly graduated tax, a certain surplus only was to go to the states. *Ibid.*, p. 1214.

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THE THEORY OF PUBLIC EMPLOYMENT OFFICES AND THE PRINCIPLES OF THEIR PRACTICAL ADMINISTRATION

PUBLIC employment offices present for discussion three important considerations: the theory on which they are based, the principles of their practical administration, and their use as agencies for dealing with unemployment. Our main attention, however, needs to be given to administrative principles. The history of public employment offices in the United States illustrates well how legislation may fail of its purpose because little attention is devoted to problems of administration. Laws are passed after long campaigns of education to arouse the public to a realization of their importance and to an understanding of their theoretic principles. This done, those who have been most active in studying the subject drop the matter and political workers are appointed to administer the laws.

It is twenty-three years since Ohio established the first state free employment offices in the United States. Since that time almost half the states in the union have followed its example. At the present writing more than sixty public employment offices are in existence in eighteen different states.[1] Yet nothing like a body of scientific administrative principles has been developed among them. There is no uniformity in their methods, no coöperation between offices, no definite policies of management. There is little or no comprehension of the nature of the business.

The circumstances which have led to the establishment of

[1] Col., Conn., Ill., Ind., Kans., Md., Mass., Mich., Minn., Mo., Mont , Neb., N. J., Ohio, Okla., R. I., Wash., West Va., and Wis. Most of these offices are under the management of the labor departments of the respective states. Montana has a statute requiring every city of the first and the second class to maintain a municipal free employment office, and in Washington five cities have established offices on their own initiative. The city clerk of Newark, N. J., conducts a free employment bureau in his office.

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public employment offices in the United States have in the main been three: the abuses of private employment agencies, the lack of farm labor in agricultural states, and the presence of great numbers of unemployed wage-earners in the industrial centers. To these must be added the example of foreign governments and the growing belief that it is the duty of the state to prevent unnecessary idleness. Whatever the reasons for the establishment of the offices, however, the results have in most cases been the same. The administration has been placed in the hands of people unfamiliar with their design and purpose. These officials have either mismanaged the offices so that they had to be discontinued or else they have performed their duties in a perfunctory and wholly ineffective manner.

This, in short, has been the history of public employment offices in the United States. In theory they were designed to furnish clearing houses for labor, to bring work and the worker together with the least delay, and to eliminate the private labor agent, whose activity as middleman is so often accompanied by fraud, misrepresentation and extortion. In practice, far from supplanting private agencies, the free offices have not even maintained an effective competition against them. With few exceptions their operations have been on a small scale, their methods unbusinesslike, and their statistics valueless if not unreliable. Four states and about half a dozen cities have discontinued their offices, and most of those now in operation are constantly on the defensive to maintain their existence.

I

Shall we say then that public employment offices are a failure and give up all attempts to establish them? If we do, we should have to say that our state labor departments, our factory inspection and our health departments should also be given up; for their history in the United States has been about the same as that of the employment offices. They have been manned without merit and their work is crude and ineffective.

The fact of the matter is, however, that employment offices, like factory inspection and the health work of our governments, are based on sound principles. Their lack of success has been

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due mainly to the general administrative inefficiency of our government work. In Europe where public labor exchanges have been most successful, they are by no means all equally successful. Some German cities have active, business-like labor exchanges, while in others the work of such bureaus is as sleepy and inefficient as in any of our own. The lesson is obvious. If we wish successful public employment offices we must, after the example of the larger German cities, put persons in charge of them who understand the business, who know its principles and its technique, and who will work with vigor and energy to make their offices successful.

But should we desire public employment offices at all? Is the state justified in maintaining such offices? These questions must be settled at the beginning. Many thoughtful people see no necessity for such public agencies. Samuel Gompers in the *American Federationist*[1] recently stated that the existing agencies were ample for distributing the labor forces of the country. The Massachusetts Commission to Investigate Employment Offices argued:

> For well-known reasons we never think of establishing governmental grocery stores and governmental dry goods shops in the hope of having the community better served than by private enterprise. The same reasons should clearly govern our attitude toward employment offices, unless it is shown that the employment office business is different from other businesses.[2]

Public employment offices, in the opinion of the Massachusetts commission, should not be established to compete "with the private office in placing regular domestic, mercantile or other skilled labor."[3]

The trouble with these views is that they are held by people who do not understand the nature of the employment business. That three months spent by the Massachusetts commission in

[1] Vol. xviii, no. 7, July, 1911.

[2] Report of Commission to Investigate Employment Offices (Boston, May, 1911), p. 13.

[3] *Ibid*, p. 96.

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studying employment offices was not sufficient to learn the business is evident from the comparison with groceries and dry goods stores. As a matter of fact the comparison should be with the post office, the school system, the distribution of weather and crop reports etc.

In order to judge correctly of the public employment offices we must know the principles upon which they are based. What then, is an employment office? And what are its purposes and functions? In a sentence, an employment office may be defined as a place where buyer and seller of labor may meet with the least possible difficulty and the least loss of time. The function of an employment office is best expressed by the British term "labor exchange." Exchange implies a market. It is an organization of the labor market for buying and selling labor, just as stock exchanges, produce exchanges, and wheat pits are organized to facilitate the buying and selling of their products.

Now why do we need an organized labor market? Employers are constantly hiring and discharging employees. Workers are constantly looking for employment. The New York Commission on Unemployment reported in 1911 that four out of every ten wage-earners work irregularly and seek employment at least once, probably many times, during the year. Moreover, it found unemployment and unfilled demand for labor existing side by side. Census returns, manufacturing statistics and special investigations all reveal the intermittent character of the demand which necessitates a reserve of labor employed not steadily but shifting from place to place as wanted.

How does a wage-earner find employment? Interesting light is thrown upon this question by statements made to the New York commission by 750 employers. Four hundred and fifty-eight of them, or over sixty per cent, stated that they could always get all the help they needed, and practically all hired their forces from persons who made personal application at their plants. Two hundred advertised in newspapers and hired from among those who made personal application at the plant. About fifty used employment agencies and ten depended on trade unions. The main reliance, therefore, is placed upon applications directly

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at the plants and upon the newspapers.[1] What this means is well illustrated in a communication sent to the Chicago Tribune by a working girl. She wrote:

> For the last ten days I have been going to the loop every day to look for work. I am there at 8 o'clock in the morning. I look for work until 11. From 11 to 12 is the lunch period in most big establishments, and it is useless to try to see anybody at that time. My lunch in a cafeteria gives me a rest of fifteen or twenty minutes. Then I am back again on the sidewalk. The chase from building to building during the morning and the constant dodging of automobiles tire me. Is there a place where I can go to rest up?

The girl's question does not concern us here so much as her method of seeking employment. Think of the waste of time and energy and the discouragement in going from door to door to ask if any help is needed. She had been doing this for ten days without success; and the significant thing about her search for work is that the demand for women workers is generally greater than the supply, and this was in a busy month, July, during a fairly prosperous year, 1913. What must be the waste and discouragement of male workers whose labor is not so much in demand?

This is the price we pay for lack of organization in the buying and selling of labor. The reason most employers can get all the help they need at their gates or by inserting an advertisement in a newspaper is because there are thousands of men and women who, like this girl, go from door to door, hundreds responding to every cue given in the newspapers. The labor market is still in the peddling stage. While dealing in almost all the important articles of trade is now systematically organized with exchanges and salesmen and trade papers, labor must still be peddled from door to door by each individual worker. A recent investigation in the Philippines describes how chair-makers and box-makers after working up a stock of goods take them to sell on a peddling tour in ox carts. When

[1] Third Report of the New York Commission on Employers' Liability and Unemployment.

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they want wood for their manufactures a member of the household sets out on the road and buys the first tree that suits his purpose. Our industries have developed far beyond this, but in the buying and selling of labor they are almost all in this primitive stage.

The economic waste from lack of organization of the labor market shows itself in the development of many small markets. Each factory gate and industrial district of a city tends to become a market. Each draws a reserve of labor ready to meet the fluctuating demands of employers. The multiplication of markets makes the necessary labor reserve unduly large and increases the maladjustment between supply and demand. Idle wage-earners and vacant positions often fail to meet. There is an oversupply of labor in one place and a shortage in another. Some occupations are over-crowded while others have not a sufficient supply. An organized market for labor is needed for the same reason that other markets are organized: to eliminate waste, to facilitate exchange, to bring the supply and demand quickly together, to develop the efficiency that comes from specialization and a proper division of labor. A good manufacturer may be a poor man at getting business, and many good workmen are poor hands at finding jobs. An organized labor market will enable workers to attend to their business of working and will develop efficient dealers in labor who will be specialized as employment agents.

II

Granting the need of an organized labor market, is it the duty of the state to organize it? Can we not depend upon private enterprise to perform this function as we do in the grocery or the dry-goods business?

It would seem a sufficient answer that private enterprise up to the present has not undertaken so to organize the labor market. Business men have allowed the distribution of labor to lag more than a hundred years behind the general development of industry, not without good reasons. The main reason has been that ordinarily the entire burden of the resulting maladjustment is borne by the wage-earner. It is he who suffers from

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the loss of time and energy. Moreover the failure to get a job quickly makes him willing to take work at any price and thus tends to keep wages down. Wherever employers have felt a lack of labor they have developed some form of organized search for help. Thus railroad and lumber companies and other large employers of labor have labor agencies, and private labor agents cater mainly to such employers.

But there are other reasons why private enterprise has failed to organize this service properly. The nature of the business is such that to be successful it really needs to be a monopoly. It is like the post office and not like the grocery business. The service is a public utility. Little capital is required, the operations are simple and the profits are large. A labor agent who ships one hundred men a day to railroad or lumber camps, which is a comparatively small number, makes a profit of $100 or more. This tends to multiply labor agencies and keep each business small. In New York City alone there are almost a thousand labor agencies and yet eighty-five per cent of the employers never use them. In Chicago there are some six hundred. The multiplication of agencies has the same evil effect as the multiplication of labor markets. They merely make more places to look for work; and the more places, the more are the chances that man and job will miss each other. The agencies, being in competition, will not exchange lists and an applicant for work may register at one while another has the job which fits him.

Furthermore, the fee which private labor agents must charge for their services precludes them from becoming efficient distributers of the labor force of a state. At the very time when labor is most oversupplied, when there are many unemployed and it is important that those who can shall go to work at once, then the fees for securing employment are highest. A barrier is thus interposed to the proper flow of labor in the channels where it is needed. Moreover, there is always the temptation to the agent to fill his positions from among people who are already employed. This practice is almost universal among private labor agents. It enables them to create new vacancies and to earn more fees.

But, besides private employment agencies which charge fees

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for their services, there have been attempts by trade unions, employers' associations, and philanthropic societies to organize the placing of labor without charge. These have generally failed, and for obvious reasons. Wage-earners will not go in great numbers to any agency maintained by employers because of its possible use for blacklisting, breaking strikes and beating down wages. Employers, on the other hand, will not patronize a trade-union office except where the trade is completely organized. It gives the union too powerful a weapon in the struggle for control. If there is any one condition that is basic in the successful management of an employment office, it is that it must be impartial as between employers and workers in their conflicts over conditions of employment. As for philanthropic agencies, the tinge of charity has been fatal to them. No self-respecting wage-earner wants to apply at a charitable agency, and no employer will call for efficient and steady help at such an institution.

The state, then, must be relied upon to organize the labor market because the gathering of information about opportunities for employment and the proper distribution of this information to those in need of it, requires a centralized organization which will gather all the demand and which will be in touch with the entire available supply; because the gathering and the distribution must be absolutely impartial; because wage-earners and employers must have faith in the accuracy and reliability of the information; because there must be no tinge of charity to the enterprise; and because fees big enough to interpose a barrier to the mobility of labor must be eliminated.

Now it may be true that employment offices perform a public function, that they are in the nature of public utilities, and yet the weaknesses of state activity may be such as to make it impossible for any American state to perform the service properly. Perhaps we ought to induce enterprising business men to organize the labor market on a large scale and then regulate them as we do our railroads and street-car companies. This is the view of a recent French writer on unemployment, M. Bellet.[1] Per-

[1] Daniel Bellet, Le Chômage et son remède (Paris, 1912). M. Bellet does not be-

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haps we ought to rely upon philanthropists to invest in this business, as they have done in provident loan societies and model tenements, with the expectation of a moderate return on the capital. This idea was expressed by Dr. E. T. Devine at the International Congress on Unemployment in Paris in 1910, and the National Employment Exchange established in New York with an endowment of $100,000 is an embodiment of the idea.

It is not necessary here to enter into the relative merits of governmental regulation and governmental operation. Suffice it to say that twenty-four states and the District of Columbia have attempted to regulate private employment agencies and have made a miserable failure of it. The business lends itself easily to fraud and imposition and it is far more true of the private agencies than of the public offices that they have been frauds as well as failures.

The United States possesses at the present time no adequate system, either state or national, for the regulation of private employment agencies, either from the point of view of the content of the laws, affording regulations of the business and restrictions as to how the business shall be carried on, or as to proper methods of enforcement.[1]

It is possible, of course, that more adequate regulation might be worked out in the future. But if the employment business is to be left in private hands it will require the very strictest supervision to insure just treatment of patrons and especially neutrality in labor disputes. The regulation could never be effective until it establishes the confidence of both employers and workers in the fairness and impartiality of the private labor agents. To accomplish this the state would have to employ

lieve in government interference. He suggests merely organization of labor exchanges by private enterprise on a national scale. I have taken the liberty of coupling his suggestion with a policy of regulation because in the present state of public opinion no exchanges such as he contemplates could be established in the United States without some form of government supervision.

[1] Labor Laws and Their Enforcement, edited by Susan M. Kingsbury (Boston, 1911), p. 366. Chapter VI of this work contains an admirable study of the regulation of private employment agencies by Mabelle Moses. See also Chapter 663, Laws of 1913, State of Wisconsin.

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honest, energetic and capable men to do the regulating who would understand the employment business thoroughly. But if the government had the services of such a set of men there can be no doubt of its ability to manage public employment offices with more success than private enterprise could, if for no other reason than the fees which the private agency would have to charge. In conclusion on this point, it would hardly be possible for the government, unless it legalizes a monopoly, to prevent the multiplication of private labor agencies, which, as we have seen, increases maladjustment between labor demand and supply.

As for a philanthropic enterprise, it is bound to be considered a charity unless it charges fees. However reasonable it may make its charges, to a certain extent it is bound to defeat its own purpose by keeping the man who has not the fee from a job. But its greatest handicap will be that it must be supported by men with money to invest, that is, by employers of labor. Workmen will always look upon it either with suspicion or with the disdain they commonly attach to paternal enterprises. As a matter of fact many of the municipal employment offices in Germany did start as philanthropic enterprises, but it was found more effective to turn them over to the cities and give capital and labor representation on a parity in their management. Much the better solution, it would seem, is for the state frankly to assume not the duty of supplying work to the unemployed but the responsibility of providing wage-earners with information regarding the existing opportunities for employment. This is what public employment offices do. The function would be no different from that assumed in the maintenance of the schools and libraries and the post office.

But will not the furnishing of this service free of charge by the government tend to undermine the self-reliance of the workers? Is it not in fact a charity although everyone may take advantage of it? This fear has been expressed whenever the state proposed to enter upon any new enterprise. In the present case it is due to a misconception of the nature of the employment business. Experience has shown the fear to be groundless. An employment office does not give work to anyone. It merely tells the applicant where there is employ-

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ment. To secure a position the applicant must have the same qualities of fitness and efficiency as if he had got in touch with the employer after a day of pounding the pavements. It is information and not jobs that employment offices distribute. The employer is directed to the supply of labor; the worker is informed as to the location and condition of the demand.

It is because the welfare of the majority depends upon the widest possible distribution of reliable information of this kind that the state is justified in giving the service free. What information could be more important to a people than to know exactly where opportunities are open for men to apply their energies to make a living? It is the same sort of information that the government distributes to business men in its consular reports, geological surveys, and its publications on the natural resources of the state. The importance and the essentially public nature of the information gathered and distributed by employment offices, makes the performance of this service a public function.

III

It remains now to be shown that an American state can actually organize the labor market and administer the organization efficiently and effectively. The Industrial Commission of Wisconsin, created in 1911, determined to try it; and two years experience with a definitely outlined plan proves that it can be done, although it will take several more years to complete the organization so that all classes of labor will be handled by the employment offices.

Thanks to the legislature, the commission was free from a handicap with which almost all the state employment offices have started—namely, a rigid statute which attempts to prescribe the methods of doing business. The effect of these statutes has been to hinder the enterprising superintendent, and to make the inefficient one feel that he is doing all that the law requires. The act creating the Industrial Commission repealed the old law and in its place gave to the commission general powers to establish and conduct free employment offices and to do all in its power to bring together employers seeking employ-

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ees and working people seeking employment. The commission was authorized to make any rules and regulations necessary to carry out this purpose, but no fees could be charged either to employers or employees. Under this statute the commission was free to adopt any methods that seemed best for handling different classes of labor, and it could change its methods whenever experience made it necessary.

The Industrial Commission first investigated the old free employment offices to find out their weakness and the causes of their limited activities. Then a plan of reorganization was worked out and the general principles of a new management adopted. The cardinal points of this management were (1) civil service, (2) neutrality in the struggles between labor and capital, (3) freedom from taint of charity and (4) distribution of information, not jobs.

This done, attention was devoted to the selection of an efficient force of employees to conduct the business. The first requisite of successful employment offices is that the persons who manage them shall know their business. This would seem axiomatic, but it is a weakness of all government activity that officials are placed in positions for political reasons rather than for efficiency. Fortunately the law made appointments subject to the civil service regulations. This did not prevent attempts at political pressure but it enabled the Industrial Commission to ward off that pressure and to insist on merit. The state Civil Service Commission coöperated, and in Milwaukee the entire staff of five employees was selected by an examining board on which the Industrial Commission, the Civil Service Commission and employers and workers were represented.

It was found that it is not at all necessary that the office force should be made up of economists or sociologists. This work, like any other business, can be learned by people of ordinary intelligence. But appointment for merit alone must be insisted on, and tenure of office must be permanent as long as the employees pay proper attention to their duties. Also some system of promotion is necessary, so that the ambitious clerk in a public employment office may be advanced both in position and salary. To hold the best employees, the employment offices

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must offer a career for the enterprising young man. Nothing kills efficiency more quickly than the knowledge that a man can not get ahead. Fortunately salaries were not fixed by law and promotion with increases of salaries has been possible.

At the head of the public employment offices was placed a person who not only understood the technique of the business but who had made a study also of the principles on which it is based, of its relation to the whole industrial life of the state, and to the pressing problem of employment. He was depended upon to train the staff, supervise its work, and to develop an administrative machine that would be permanent. The subordinate officials knew that they were selected because they seemed most promising, and they were made to understand that their tenure of office depended upon the character of their work. When vacancies occurred the most fit were promoted. As a result, Wisconsin employment offices have a force of employees which is as loyal, hardworking, and interested as any in private business.

As part of an effective administrative machinery, a system of representation of the interests involved was worked out in order to insure confidence of both employers and workers and impartiality in labor disputes. A managing committee of employers and workmen was organized, with each side equally represented, the state and local governments also having members. This committee decides all matters of policy, supervises the expenditure of funds, and watches the work of the office. It sees to it that neither one side nor the other is favored during strikes.

It was established as a principle of the management that the offices are not charities, but pure business propositions to facilitate the meeting of buyers and sellers of labor.[1] Fitness for positions is the prime test in all dealings. If applicants are unemployed because of old age, inefficiency or disability of any

[1] Without advertising the fact, the Wisconsin employment offices do attempt to place the handicapped. Aged, crippled, and deaf-and-dumb workers have been placed in positions which they could fill when the superintendents of the offices have explained the circumstances to the employers. But the offices must establish a reputation for ability to select capable employees before they can afford to handle handicapped workers on a large scale. A complete organization of the labor market would include a department for the handicapped.

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kind, it will be no help either to them or to the community to refer them to positions which they cannot hold; and it damages the reputation of the office.

Finally it is strictly maintained that information and not jobs are distributed by the public employment offices. No one is assured of a position by applying for work. And no employer is assured of help. The offices merely bring to the notice of working people the opportunities for employment for which they are fitted, and connect employers with the available supply of labor of the kind they need. Employers and workers are left to make their own bargains. No responsibility is assumed by the management beyond the accuracy and reliability of the representations that are made by the office force to applicants for employment or for help.

The result of this management has been unusually successful. The Milwaukee office is the only one located in a city large enough to permit of great expansion. During the first year its business was increased almost fourfold over preceding years when it was conducted as the majority of employment offices in the United States have been managed. Applications for employment increased from 6300 to 23,000; help wanted from 6200 to 29,000; and persons referred to positions from 6000 to 24,000. Of the 24,000 referred, it was ascertained that 11,400 had actually been hired. During the second year the business increased over the first by about forty per cent. The first year the cost per verified position secured was sixty cents. The second year it was less than fifty cents. With future growth this cost should be much further reduced. The other three free employment offices in Wisconsin are located in cities with populations of less than 45,000. While they have not shown such remarkable results, they are substantially increasing their business.

The appropriation made by the legislature for the work of the free employment offices would not have enabled the Industrial Commission to carry out its plan. An agreement was therefore made with the city and the county of Milwaukee by which they undertook to provide the funds for paying rent, light, heat, telephone and janitor service for the office in Mil-

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waukee. This made it possible to conduct the office on a scale large enough to meet the requirements of the city, and as business increased, to add to the members of the staff. Further, expenditures in the offices at LaCrosse and Oshkosh, where the business is small, were reduced almost half, and the savings were devoted to the larger offices in Superior and Milwaukee. The legislature of 1913 passed a law which authorizes any city, county or village to make an agreement with the Industrial Commission for the joint maintenance of local free employment offices. This will enable the commission to spread the Milwaukee plan all over the state.

Coming a little farther into the details of management, an accurate system of record-keeping is essential. The temptation is ever present to minimize the importance of records and to say that the securing of employment is the chief function. But it is not possible to run an employment office properly without a careful system of records any more than any other business can be conducted without a set of books. A proper selection of applicants for positions available is possible only by a careful system of registration. Moreover the applicant must be followed to the place of employment and a record kept of the positions to which he is sent. On the employer's side a list of the applicants referred to him must be kept.

Often men do not report for work; sometimes they hire out and fail to appear the next day, or they work a few hours and quit without reason. Employers, too, are not careful to represent conditions as they are. They sometimes promise more wages than they pay, or if board and lodging are a part of the remuneration they may not provide proper food or accommodations. Often they promise steady work when they need but temporary help; and some employers fail to pay wages promptly. The record of such facts with regard to both employers and employees must be carefully noted in order that each applicant may be judged correctly and the character of the positions accurately represented to those seeking employment. It is easy to overload an office with bookkeeping, but if the managers study the work thoroughly and are not afraid to make changes from time to time, as new methods suggest themselves, a simple card

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system can be worked out which is easy to understand and requires little time to maintain.

The record system in the Wisconsin offices is designed to help in securing the best adjustment of men to positions, and also to throw light on conditions of demand and supply in the labor market. No information is asked of applicants for employment or for help that will not be of use in connecting workers with the work for which they are best fitted.

Applicants for employment are required to register, giving name, address, age, nationality, conjugal condition, last occupation, and length of residence in the city. On the back of each applicant's card is posted all the employers to whom he has been referred for work, the dates on which he was sent, and what the result was—whether he secured the position or not, whether he failed to report, or was hired and did not appear for work.

In the same way an "Employer's Order Card" registers the demand for help, the kind and number of men and women wanted, the nature of the experience required, the wages paid, whether the work is steady or temporary, and whenever possible, the number of hours work per day. The name of every applicant who is referred to the employer is entered on the back of the latter's order, and the result in each case is posted in the same way as on the employee's card.

In order to keep tab on applicants, each person referred to a position is given an "Introduction Card" to the employer, and the latter is requested to sign the card and return it to the office if the applicant is hired. When no word is received from the employer either by card or telephone, a return post-card is sent to him giving a list of those referred to him for work and asking him to check the names of those whom he hired. In this way all positions filled are verified.

From the "Applications for Employment" and "Employer's Order" cards, a daily report of business is made by each office to the central office of the Industrial Commission. The reports show the demand for help and the supply of labor classified by industries and occupations; also, whether the occupations are are skilled, semi-skilled, or unskilled, and whether the positions are temporary or permanent.

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From these reports, labor market bulletins are compiled and distributed among the offices and to the newpapers of the state, and the information is made use of in connecting unemployed wage-earners in one part of the state with demand for labor in another district.

Care is taken to give applicants as full imformation as possible about the positions to which they are referred. Discrimination is made only on reliability and fitness, and such discrimination is always openly made and the reasons frankly given to the persons discriminated against. Here the records of the office are of the greatest value in offering proof of unreliability or unfitness, and in the case of employers, of misrepresentation or unfairness in treatment of former applicants. As employers find an office careful in selecting applicants they place more and more value on its introduction cards. Sometimes they refuse to hire anyone without such a card, which is a recognition that the staff of the employment office is developing experts. Workmen soon learn the value of the introduction card, and when such a card is consistently refused to the unfit and unreliable, these are soon separated from the able and willing workers.

There is, however, no rigid rule of unfitness, and the office force does not pass judgment on applicants from the one-sided standpoint of the employer. A man may be unfit for a steady position, but he may be the best fitted for a short job of a day or a week. An applicant may refuse employment if wages or other conditions do not suit him, as many times as he pleases, provided he does not agree to accept the position and then fail to keep his promise, thus keeping another man from the work. Just as the employer may hire whom he pleases or for as short a period as he pleases, so the worker may accept what position he pleases, and for as short a period as he pleases, provided in both cases the parties make their intention known to the office force and thus do injury to no one.

Once the principles and methods here outlined were established, it was an easy matter to increase the business and draw away trade from the private labor agencies. The latter are seldom careful in the selection of applicants, and when employers learned of the methods employed by the state offices they

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preferred to patronize them. Wage-earners, too, began to come in greater numbers as they saw the calls for help at the free offices increasing. They soon learned that at a factory gate they have but one chance to get work, while at the employment offices there may be many. And when they saw the free offices active and energetic in gathering and distributing information about jobs, they refused to pay labor agents for this information. Even employers with whom these agents were dividing their fees were compelled to come to the free offices, for there the labor that they needed was to be found.

When demand for labor came from a distant part of the state or from other states, the cost of transportation presented a difficulty. In Great Britain the labor exchanges lend money to applicants who wish to go to work in distant places. This is hardly necessary in this country because employers are usually willing to advance the fare, and sometimes to pay it, if they have confidence in the ability of the employment office to pick the proper men. As security for the fare the men's baggage is checked ahead to the employer. Men are sent out of town from the Milwaukee free employment office under arrangements of this kind almost every day.

The prime test of the successful management of an employment office comes in times of industrial disputes. Experience has shown that to take sides with either party to the dispute is fatal. Following the British practice, the Wisconsin employment offices adopted the policy of listing demands for help from employers whose workmen are on strike, but carefully informing each applicant that there is a strike at the establishment. Then if the applicant wishes to be referred to the employer he knows the conditions and goes on his own responsibility. Employers and union men have expressed their satisfaction with this policy during several strikes that have occurred.

Important as is the work of public employment offices in solving these practical administrative problems to which consideration has been given, such work by no means covers the entire field of service open to them. By adopting such poli-

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cies as have been described and carrying them into execution with vigor and efficiency, a successful and highly important organization for *distributing* labor can be built up and utilized. But, in addition to this, public employment offices have an important public function to perform in studying the causes of unemployment and providing means by which unfortunate conditions may be remedied. How much they can accomplish towards this end and what policies must be adopted to make them effective agencies for reducing the number of the unemployed will be discussed in a future article.

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COMMERCE AND WAR

I

INTERNATIONAL trade, we are often told, is one of the most powerful of the influences making for universal peace.

Century by century, decade by decade, the commercial relations between nations become closer. In steadily increasing measure the welfare of one nation is bound up with that of other nations through trade. Statesmen may view with alarm the increasing dependence of their countries upon foreign supplies and foreign markets, and endeavor to check the progress toward world organization through isolating policies of fiscal regulation. In vain. Since the time of Henry Clay we have striven to maintain an "American system" of economic organization; but the importance of our international economic relations has none the less vastly increased. There is no power in national governments sufficiently great to hold in check the modern tendency toward an order of universal economics.

That international trade is destined to increase in importance can hardly be denied. Is it certain, however, that trade between nations tends toward universal peace? Such was not the tendency in past ages. What was it that animated the mutual hatred of the Italian cities in the period of the Crusades? Competition for the trade of the Levant. The East India trade was responsible for a great share of the cruelties perpetrated in the struggle between Spain and the Netherlands. The bloody war between England and Holland in the 17th century was essentially a trade war. Competition in trade kept England and France in arms for one hundred years. The Napoleonic Wars were in part, at least, a result of trade rivalries, as was also the Crimean War. The Russo-Japanese War, the Boer War, the war between Italy and Turkey are recent wars in which the trading motive is easily discernible. Even our own Spanish-American War has been ascribed by certain European historians to a desire on the part of the American people for colonial markets.

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Alongside of the optimistic view that increasing foreign trade is a force making for world peace, we must place the pessimistic view that all modern wars are essentially commercial, and that war is, in fact, an inevitable concomitant of trade expansion. The latter view appears, indeed, to have the better support from history. The growing dependence of Venice upon trade, in early modern times, made that state not less but more warlike. When the Netherlands began to engage heavily in trade, they also became prompt to accept occasions for war. Most of England's reputation for pertinacious fighting has been established since her assumption of the rôle of a great trading nation.

Accordingly it is a question of great interest whether a strife-breeding quality is really inherent in trade. If this be the case, the prospect of permanent international peace is remote indeed. There is every reason to believe that for ages to come international trade relations will grow increasingly important; and if trade is naturally bound up with war, this must signify only that the wars of the future will be more calamitous than those of the past.

II

If we wish to understand the relation between foreign commerce and war, we must inquire, first of all, whether we are justified in treating commerce purely in quantitative terms. Foreign trade manifests a wide variety, both in the objects that enter into it and in the circumstances in which it is conducted. In either respect it undergoes marked changes from generation to generation—changes that a purely quantitative study does not reveal. And even a very superficial examination of international relations indicates that it is the character, rather than the quantity of trade that bears upon the question of war or peace. England and Germany compete in the export of textiles to the United States; the trade is an important one, yet it is never enumerated among the causes of the alleged hostility existing between the two nations. Both countries are competitors in the purchase of American cotton, but this competition excites no international animosity whatever. For a number of years Canadian competition in the supplying of wheat to the

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British market has threatened to confine our own wheat growers to the national market; but it would be difficult to find anywhere in the United States a trace of jealousy of Canadian agricultural development. For the United States, as for many other countries, England is by far the greatest market for exports and imports as well. Yet it has never occurred to our enemies to devise plans for excluding us from the British market, nor has it occurred to us that we might ever have to fight for it.

The markets of North China, on the other hand, are relatively unimportant, if measured quantitatively. Yet there are nations that endeavor to exclude other nations from them; and such exclusion would be regarded as proper ground for serious diplomatic representations, if not for war. Central Africa is worth scarcely anything to the white races except as a market. And, as a market, its power of supplying and absorbing products is low. Nevertheless, great powers have recently been brought to the verge of war by the question of the control of this region.

As the foregoing contrast indicates, there is a kind of trade which involves no warlike element, and another kind that is a natural cause of strife. In what does the difference fundamentally consist? Not in the kind of objects entering into trade, but in conditions arising in the field of values and determining the possibilities of profit.

Among nations in the same plane of civilization, already closely related through trade, there exists a fairly uniform scale of values. With due allowance for costs of transportation and customs duties, all movable goods command about the same price in the United States as in England or France or Germany. The American wheat exporter can just afford to send wheat to the British market. The price he receives pays him for his labor and risk, and gives him ordinarily a reasonable profit besides. It gives him no surplus on which to finance a campaign of exclusion against Canadian or Russian wheat exporters. The latter, also, are forced to content themselves with moderate rewards. There are no startling profits to excite international jealousies. Accordingly, there is nothing in a trade of this character that could by any chance lead to international strife.

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Some ill feeling may occasionally be produced by what appear to be unfair competitive methods, such as "dumping." But this is essentially a matter of industrial, rather than commercial competition, and hence falls outside of the range of the present inquiry.

The trade between regions differing widely in civilization, especially if it is a new trade, stands on another footing. Here the most striking fact is discrepancy in the scale of values. In Oregon, one hundred years ago, four leaves of tobacco could command a beaver skin. On the African Gold Coast, in the early 18th century, a lucky trader might occasionally exchange a handful of salt for a handful of gold dust. There was a time when the Japanese ratio of gold to silver was one to four, while that of the Occident was one to fifteen. From such instances, chosen, it is significant to note, from the more or less remote past, it is easy to reconstruct for ourselves the conditions under which the foreign trader worked. A fortune was easily to be had through the exploitation of existing differences in value scales. In the nature of the case, however, profits of such character could not be permanent. They were essentially similar to those from placer mining: exceedingly remunerative to the first comer, but intolerant of competition.

Monopoly was a normal characteristic of trade between regions with widely varying scales of value. The East India Companies of Portugal, Holland, and England could not tolerate "interlopers"—their own nationals not authorized to trade under the laws of the companies. No more welcome were the interlopers in the American fur trade, or in the African slave trade. And if a chartered company could not tolerate the competition of its nationals, what must have been its attitude toward the citizens of other nations that attempted to trade in the territory which it had marked out for itself? History affords us an abundance of information bearing upon this question. Always the foreign trader was regarded with detestation. To mislead him by false information, to place him in the hands of corrupt guides who would conduct him out of the track of profitable trade or even into positive dangers, were among the mildest measures employed. If the foreigner manifested the

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determination to force himself into the forbidden trade, distrust and ill will ripened into implacable hostility. The history of trade with so-called barbarous races is red with "factories" burned and massacres perpetrated. The nations to which the traders owed allegiance might be at peace; but between the traders themselves there could be no lasting peace. There is scarcely anything in history more barbarous than those wars of trading posts on the coasts of India or Africa or in the forests of America. It was a warfare without rules, having for its object not subjugation, but utter extermination.

It was inevitable that the bitterness arising from such conflicts should extend, in ever widening circles, until they colored the whole national consciousness. Spanish cruelty, French chicanery, British perfidy, and the cold greed of the Dutch, were popular concepts originating in the contest for trade on the fringe of Occidental civilization, or in economic terms, on the fringe of the Occidental value system. And these concepts, if they did not lead directly to international war, none the less afforded a basis for the warlike fervor upon which the statesman relied in his schemes of national aggrandizement.

III

For upward of a thousand years trade has been carried on between the commercialized Occident and regions under different scales of values. And in all this period the trader has provided causes of war, or contributed substantially to any other causes that might arise. In this millenium, however, the Occidental value system has gradually extended its borders. At the beginning of the period it included only the central European part of the Mediterranean basin. Trade with Syria, Africa and North Europe was worth fighting for. At the close of the epoch of discovery, most of Europe was under one value system; nations could afford to fight only for the trade of other continents. At the opening of the 19th century the cream of the exploitative trade of America and the East Indies had been skimmed; yet much remained worth monopolizing even there, and Eastern Asia and the greater part of Africa were virgin soil. At present, what remains? Parts of China and Central

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Asia; the heart of Africa, a few remote districts like the headwaters of the Amazon and the territory around Hudson Bay. For the rest, the world is under a uniform scale of values. Exploitative trade, which for ten centuries incited the nations to war, has practically completed its mission.

Although the era of exploitative trade is almost at an end, it would be rash to assume that its political influence has vanished. Political systems are constantly adapting themselves to economic conditions, but always lag behind. In this sense, politics is past economics. Especially is this true of international politics, where tradition necessarily plays an exceedingly important part. Domestic policies may change with the rise to power of a new political party; but a nation's foreign policy is expected to remain consistent. Whatever party controls our government, we may be sure that it will cherish the Monroe Doctrine with traditional zeal. The British government, whether conservative, liberal or radical, must fix a watchful eye upon the trade routes to India. Russia, whether an absolute monarchy or a constitutional government, must keep alive its traditional yearning for Constantinople and British India. These and similar policies are in large measure the outgrowth of the exploitative trade that is now vanishing from the earth. The trading advantages to be derived from the occupation of India are no longer worth fighting for. With India under British rule the Russian trader finds no obstacles placed in his path; and if India were under Russian rule, its trade with England would not be seriously affected. One hundred years ago India was a rich prize, commercially; it is now merely a region in which men may buy and sell at moderate profits. Russia and Great Britain may yet fight over India, but if they do it will be chiefly on account of memories of economic relations now obsolete.

IV

The trade between regions of the same order of civilization has itself undergone noteworthy changes in character. In early modern times the commodities entering most generally into international trade were luxuries. Spices and gems from the East, amber from the Baltic, silks and other textiles from the

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Mediterranean cities, arms from Germany and Spain, are typical of the wares that could bear the expense of transportation when carriage by land was laborious and carriage by sea fraught with risks. With the improvement of ocean and land carriage a vast commerce in staples grew up. Along with the commerce in staples has arisen what in default of a better name we may call a specialty trade, of which the automobile and the typewriter may be given as representative objects. The trade in specialties is, of course, still greatly inferior to the staple trade, but it is steadily increasing in relative importance.

These differences in character of trade are not without a bearing upon the questions of international politics. The trader sojourning in a foreign land is an important medium of communication of feeling between nations. According as the treatment he receives is cordial or hostile, he will contribute to international good will or to international hostility. Now, the trade in foreign luxuries has always been subject, in greater or less degree, to popular condemnation and often to hostile public regulation. The representative of such trade has shared the hostility directed toward it. Some indication of his position in an earlier time is given by the elaborate commercial treaties of the 18th century, designed to secure for the trader such elementary rights as freedom of domicile, security against unlawful seizure of his possessions, etc. The harshness of the laws regulating his business often forced him to employ illicit methods, the success of which was ordinarily assured by the fact that his wares were most frequently articles of fashion and could therefore make their way to the consumer in spite of the law. We need only to recall the spectacle of a British Parliament, debating more stringent rules for the exclusion of French textiles that fashion nevertheless required the members of Parliament to buy; or the endeavor of the officials of the French Empire to exclude from France the cashmere shawls that they yet were forced somehow to procure for their own wives and daughters. It is easy to represent to ourselves the feelings that a trade of this character must have excited in the foreign merchants who conducted it. They had every reason for contributing to the mutual contempt and detestation in which eighteenth century nations held one another.

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With the trade in staples the case is entirely different. Even in early modern times the export of English wool to the Flanders proved a sound basis for harmonious political relations. The exporting nation rejoiced in a steady market, the importing nation in an unremitting supply of a commodity of wide use. The development of staple trade in the 19th century has nowhere evoked international hostility. We cannot quarrel with Great Britain for taking our wheat and cotton, nor can she quarrel with us for providing them. Merchants and their agents residing abroad in the interests of a staple trade have very rarely been subject to injury or indignity.

A staple trade may, of course, be crippled by adverse customs regulations; but in most instances such regulations concern national, rather than international politics. A German duty upon American cotton might be injurious to Americans engaged in the cotton trade, or to the American producers of cotton. Most of the injury, however, must fall upon the German cotton manufacturer and domestic consumer. The Germans may wish to hoist their cotton supply over their own tariff wall; but that is chiefly a matter that concerns them alone. The trade in staples is a powerful force and succeeds in making its way against even serious obstacles.

On the other hand, the staple trade cannot be said, of itself, to produce a conscious internationalism of feeling. Our exporters ship their cotton to the best market. The buyer nation may detest us, but it will not pay a higher price for cotton from a nation with which it is on better terms. There is, in short, no sentiment in the staple trade. The qualities of goods are known, as are the prevailing prices. The direction of the currents of trade is determined, as nearly as anything human can be, by mechanical laws.

In the specialty trade a different spirit must prevail. The staple sells itself. The specialty can be sold only through systematic cultivation of the market. No manufacturer of automobiles or farm machinery or typewriters can consign his products to a foreign market, in the confident expectation that they will be taken at remunerative prices. A definite demand for a particular type of product must precede its profitable supply.

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In building up a demand for a specialty the exporter may man his foreign agencies with his fellow-countrymen, or he may employ foreign agents for the purpose. In either case it is necessary to cultivate cordial international relations. The French merchant who desires to work up an American market for his automobiles cannot afford to send to this country agents who are strongly imbued with the prejudice that America is a nation of barbarians. Nor can efficient service be expected from resident agents who are wanting in respect for the French. The international specialty trade, as has frequently been noted by observers of commercial conditions, manifests throughout its personnel a spirit of cosmopolitan good fellowship. It could not have been otherwise.

V.

More than any other branch of commerce, the specialty trades stand in need of stable and harmonious international relations. We cannot establish a foreign market for our automobiles or farm machinery without a considerable expense in building up a marketing organization. A severe customs duty directed against us virtually destroys a capital invested. It is not so with a staple trade. The British may levy a duty upon our wheat, and curtail our market, in some measure. But we have no capital invested in a wheat-marketing organization that the duty could destroy. It follows, then, that whereas exporters of staples may regard the commercial policy of foreign nations as something with which they need not be greatly concerned, specialty exporters are intimately interested in every change in commercial policy. Of all traders they are least able to survive a customs war or other serious disturbance of international business.

It may perhaps be supposed that the eagerness of the representatives of a foreign trader to cultivate the good will of the people among whom he hopes to conduct business will be met by hostility on the part of his domestic competitors. This, however, is to misconceive the character of the specialty market. The agents for different types of automobiles are, to be sure, competitors for sales, but they are virtually coöperating in producing a general interest in automobiles. There is excel-

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lent warrant for the view, often expressed by automobile dealers, that more machines of American make have been sold in this country than would have been sold if French machines had never been imported. From trade of this character international harmony is the most natural result.

One of the two great branches into which trade is historically divisible, typified by commerce with colonials, barbarians, infidels, naturally breeds war. This branch of trade has very nearly disappeared through the extension of the Occidental value system to the ends of the world. Of the other great branch, one form, the trade in luxuries, once predominant but now relatively insignificant, has served in its time to produce international discord. The great staple trade of modern times has had nothing to gain from international animosities, and the growing specialty trade has everything to lose from them. We are therefore justified in asserting that war and commerce, united through a thousand years, are now in fact divorced, except perhaps in the eyes of the international politician, who still premises his action upon their ancient relation.

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THE MINNESOTA RATE CASES

THE PROBLEM OF FEDERAL VERSUS STATE RAILWAY-RATE CONTROL

THE decision of the Supreme Court of the United States in the Minnesota Rate Cases,[1] handed down on June 9, 1913, was perhaps the most important that has been rendered since the Standard Oil and American Tobacco cases, decided in 1911. The principal question before the court was whether a state has the power to fix intrastate railway rates when they clearly result in discrimination against places outside the state or practically compel a revision of interstate rates.[2]

The cases were appealed from the Circuit Court of the United States for the District of Minnesota. The suits were originally brought by stockholders of the Northern Pacific Railway Company, the Great Northern Railway Company, and the Minneapolis & St. Louis Railroad Company, respectively, to restrain the enforcement of two orders of the Railroad and Warehouse Commission of the State of Minnesota and two acts of the legislature of that state, prescribing maximum charges for transportation of freight and passengers, and to prevent the adoption or maintenance of these rates by the railroad companies.

The orders and acts, which by their terms related solely to intrastate traffic, were as follows: (1) the commission's order of September 6, 1906, effective November 15, 1906, fixing the maximum class rates for general merchandise; (2) the act approved April 4, 1907, to take effect May 1, 1907, prescribing two cents a mile as the maximum fare for passengers, except for those under twelve years of age, for whom the maximum rate was to be one cent a mile; (3) the act, approved April 18, 1907, to take effect June 1, 1907, fixing maximum commodity

[1] 230 U. S. 352.

[2] A second point, which will not be considered in this paper, was the basis of valuation by which the reasonableness of the rates fixed by the state should be tested.

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rates for carload lots of specified weights; (4) the commission's order of May 3, 1907, effective June 3, 1907, establishing maximum "in-rates" for designated commodities in carload lots from St. Paul, Minneapolis, Minnesota Transfer and Duluth to certain distributing centers. (No complaint was made of this order in the case of the Minneapolis and St. Louis Railroad Company.)

The complainants assailed these acts and orders upon three grounds: (1) that they amounted to an unconstitutional interference with interstate commerce, (2) that they were confiscatory, and (3) that the penalties imposed for their violation were so severe as to result in a denial of equal protection of the law and a deprivation of property without due process of law. The jurisdiction of the circuit court was sustained in *Ex parte* Young,[1] where it was also held that the penal provisions of the acts, precluding a fair opportunity to test their validity, were unconstitutional. The circuit court referred the suits to a special master, the Hon. Charles E. Otis, who took evidence and made an elaborate report sustaining the complainant's contentions on both points.[2] His findings were confirmed by the circuit court, and decrees were entered accordingly, adjudging the acts and orders (with the exception, in the case of the Minneapolis and St. Louis Railroad Company, of the order of May 3, 1907) to be void, and permanently enjoining the enforcement of the prescribed rates, freight and passenger, and their adoption or maintenance by the railroad companies.[3]

From these decrees the attorney general of the state and the members of the Railroad and Warehouse Commission appealed to the Supreme Court of the United States, and, in the cases of the Northern Pacific and the Great Northern companies, obtained a complete reversal. In the case of the Minneapolis and St. Louis Company, the decree was affirmed on the ground that

[1] 209 U. S. 123.

[2] See Shepard *v.* Northern Pacific Ry. Co. (184 Fed. 765); also Master's Report, United States Circuit Court, District of Minnesota (in Equity), Shepard *v.* Northern Pacific Ry. Co., *et al.*

[3] This brief review of the cases is taken substantially from the opinion of the Court delivered by Mr. Justice Hughes, Minnesota Rate Cases, 230 U. S. 352, 376.

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the rates did not allow a fair return to that particular railroad. But, in all the cases, the Supreme Court refuted emphatically the view that the rates, relating solely to transportation wholly within the state, constituted an unconstitutional interference with interstate commerce.

The views expressed in this decision were re-emphasized a week later, on June 16, 1913, in the Missouri rate cases, in which the same contention was made as in the Minnesota cases —that the rates as fixed by the state placed an unconstitutional burden upon interstate commerce.[1] The principle, therefore, has been settled that a state has the power to fix any rates upon intrastate transportation, whatever their effect upon interstate commerce, providing they allow the railroads a reasonable return upon property devoted to intrastate traffic.

Perhaps we should note that neither the Minnesota nor Missouri cases had appeared before the Interstate Commerce Commission for the investigation of facts. There is a bare possibility, but certainly a very remote one, that the court might have taken a different view if the commission had made an investigation and had definitely reported the rates as substantially interfering with interstate commerce. Yet such a situation would not be materially different from that of the Minnesota cases, unless the court were to recognize the commission's report as authoritative, where it failed to give recognition to that of a specially appointed master. Surely such a position is not one likely to be taken.

The so-called Shreveport rate case should perhaps receive brief consideration in this connection. The case appeared first before the Interstate Commerce Commission as a complaint of discrimination against Shreveport, La., compared with certain Texas cities. Rates out of Shreveport into Texas territory were much higher relatively to distance than the rates to the same territory out of Austin, Dallas, and other Texas competitors of Shreveport. The defense claimed that this discrimination was not voluntary, that it was due to the low intrastate rates fixed by the railroad commission of Texas, and therefore did not fall

[1] Missouri Rate Cases, 230 U. S. 474.

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under the prohibition of the Interstate Commerce Act. The commission ordered that the discrimination should be removed, holding that the act forbidding discrimination between localities applied not only as to two interstate hauls *but also as to two hauls one of which is interstate and the other intrastate*, even if for the latter the rate was fixed by a state commission.[1] An appeal was first taken to the United States Commerce Court where the order was affirmed,[2] and has since been carried to the Supreme Court of the United States, and will probably be argued during the present term. Any decision that may be made in the case is bound to be extremely important. If the commission's order should simply be affirmed, then there will be the extraordinary situation of interstate rates throughout the country having to be adjusted to varying standards fixed by the states. If, however, the order should be simply overruled, then apparently discrimination could be legally continued if due to requirements as to maximum rates imposed by the states. But there is a possibility, although a slight one, that *in view of the commission's investigation and report of the facts in the case*, the Texas rates may be declared invalid.

A fair summary of the Supreme Court's view as to the present decision is perhaps as follows. Congress has the constitutional power to regulate commerce between the states. In matters which require uniformity of regulation this power is exclusive, and there is immunity from state control. In other matters, admitting of treatment according to local conditions, "the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation." A state can not "under any guise impose *direct* burdens upon interstate commerce." But in matters not requiring general uniformity of control, affecting principally local interests, a state may regulate although thereby *indirectly* affecting interstate commerce. In such matters, the federal law which can be ap-

[1] See Railroad Commission of Louisiana *v.* St. Louis South Western Ry. Co., 23 Interstate Commerce Commission Reports, 31.

[2] See Texas and Pacific R. Co. *v.* U. S., No. 68, U. S. Commerce Court.

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pealed to as providing immunity from state control is only that part of the complete power which Congress has expressly assumed; beyond that, the federal power is dormant.

Till 1887, when the Interstate Commerce Act was passed, the the entire power of Congress to regulate interstate transportation had been dormant. All federal regulation at present, therefore, as to matters deemed by the court not to require uniformity of regulation, is confined to the power that Congress then clearly assumed, and has since chosen to exercise through amendment of the original act. The statute provides for reasonable rates and prohibits various forms of discrimination, but it expressly states that its provisions shall not apply to transportation wholly within a state. Consequently, until Congress provides positively to the contrary, a state has the power to fix intrastate rates even if they interfere with interstate relations, since this would not be considered a direct effect. If rates fixed by a state furnish reasonable returns to the railroads, they cannot be invalidated whatever their *indirect* consequences upon conditions outside the state.

That is the law. If the situation has become such that adequate regulation of interstate rates cannot be maintained without limiting a state's power over intrastate rates, "it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments, the measure of the regulation it should supply." Mr. Justice Hughes declares, "It is the function of this court to interpret and apply the law already enacted, but not under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon."

I

What the final result of the decision will be, it is impossible to foretell. The tendency in a forecast is perhaps always to exaggerate either the good or the bad that may be expected. In the long run, railway history will probably be determined by more fundamental forces than court decisions. At best, however, the present decision will probably hinder the work of the Interstate Commerce Commission in trying to establish a net-

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work of systematic and reasonable railway rates throughout the country. And, for a time at least, it may undo in a considerable measure the work of twenty-five years' laborious effort.

As is well known, the great work of the Interstate Commerce Commission—and it was created primarily for that—has been to bring order out of the chaotic rate situation that prevailed throughout the country before 1887 when the Interstate Commerce Act was passed. The commission's task has been extremely difficult and its work has been hampered by a multitude of conditions, especially from time to time by the lack of power to proceed in the way that seemed wisest. The railroad business is primarily national. State lines for the most part are accidental and incidental matters. The great mass of transportation passes through state boundaries.[1] Only a small proportion of our railway mileage was constructed purely for intrastate purposes. Consequently, questions pertaining to rates, whether of reasonableness or discrimination, perhaps even questions pertaining to service, are primarily of national or interstate character and only incidentally local. In view of this fact, the limitation placed upon the commission's power by the court is very likely to stand in the way of effective regulation and of further progress in the establishment of a national system of reasonable and non-discriminatory rates.

We may ask, what is the effect of special state rates upon the general business of the country? Perhaps this question cannot be answered satisfactorily at the present time for lack of sufficiently complete information. It has never been extensively investigated, and, except in the recent cases, has never received more than superficial consideration by the courts. It is true that in several cases the contention has appeared that the intrastate rates resulted in unconstitutional interference with interstate commerce. But the facts presented in support of the contention were so meagre or so general in character that they were pushed aside as having no particular significance, and at

[1] In the year 1906, the freight business of the Northern Pacific Company local to Minnesota was 2.67 per cent of its entire freight business and 12.33 per cent of that touching the state. Its passenger business local to the state was 5.79 per cent of its entire business and 67.21 per cent of that touching the state. 184 Fed. 776.

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best as showing only a slight or remote effect upon the general commerce of the country.[1]

But, in all probability the effect is not incidental and remote. The courts, and our legislative bodies also, simply have not understood the interdependence of railway rates. Apparently, heretofore when the point was raised before a court that particular intrastate rates interfered with the general commerce, the complainant was merely striving to make every possible point, this among others, and neither counsel nor court really appreciated the inner matters that were actually involved. The present cases mark the first occasion when sufficient facts were presented to arrest the serious attention of the court. Whatever the decision as to the state's power, the facts presented leave little doubt but that the Minnesota rates actually did seriously and prejudicially interfere with interstate commerce. Moreover, it seems such must be the necessary result of any extensive system of state rates which cut materially below prevailing interstate standards. The validity of this view should be tested by a general comprehensive inquiry into the relation of local and interstate rates. This should be conducted by the Interstate Commerce Commission or by a body especially appointed by Congress for that purpose. The facts should be impartially considered and placed squarely before the public.[2]

Let us briefly consider the clearest examples furnished by the Minnesota cases of how the local and general rates are interwoven. Duluth, Minnesota, and Superior, Wisconsin, are twin cities at the head of Lake Superior. For the most part they are engaged in the same kind of business, deal with the same territories and are served by the same railroads; for business purposes they are one city; the state line between them is an incidental matter. Consequently, before the special Minnesota schedules were established, they received the same rates throughout, whether to places in Minnesota, Wisconsin or other

[1] See Ames *v.* Union Pacific Railway Co. (64 Fed. 165, 171, 172); Louisville & Nashville Railroad Co. *v.* Kentucky (183 U. S. 503, 518, 519).

[2] To avoid the repetition of terms, in the following pages "local" will frequently be used in place of intrastate and "general" for interstate commerce.

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states. That they should be awarded such equal treatment was obviously just and proper. Then, as a result of state action, Duluth was granted for Minnesota territory on the average twenty to twenty-five per cent lower class rates, and consequently, as between the two cities, practically obtained a monopoly of the Minnesota business.[1] Duluth jobbers and a multitude of other business interests simply gained at the expense of those in Superior.

Other groups of cities were affected by the Minnesota rates exactly as were Duluth and Superior. Thus, Grand Forks, North Dakota, and East Grand Forks, Minnesota, Fargo, North Dakota, and Moorhead, Minnesota, Wahpeton, North Dakota, and Breckenridge, Minnesota, form in each case twin groups. There are two cities with an imaginary state line between; they depend upon the same territory and are served by the same railroads. Obviously, the reduction in rates gave East Grand Forks, Moorhead and Breckenridge in Minnesota a tremendous advantage over their competitors for all Minnesota business. Jobbers in the North Dakota cities had to abandon their Minnesota trade or handle it at a considerable sacrifice compared with previous conditions.

Besides these obvious cases, the report of the master shows that previous competitive conditions were upset throughout the northwestern traffic territory served by the Great Northern and Northern Pacific Railway companies. Rates had been made irrespective of state lines with a fair regard to relative distances. The sweeping reduction on local traffic gave Minnesota towns an advantage over those outside of the state, even if the latter were a long distance from the border. Thus, with traffic moving westward from the eastern Minnesota terminals or distributing centers, Moorhead and all intermediate Minnesota towns received relatively an advantage over Butte and intervening Montana or North Dakota places, *being able to obtain their supplies more cheaply*. In the same way, with traffic moving to the eastern terminals, localities in Minnesota obtained an advantage over their western competitors, *because they could*

[1] See 184 Fed. 778.

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market their products more cheaply. The special local rates upset the commercial equilibrium which had resulted from long years of rivalry through that large competitive area. They favored unduly all places in Minnesota and discriminated correspondingly against those outside the state.

It appears inevitable that whenever intrastate rates are reduced to a substantially lower level than that of the general rates, the result must be an immediate discrimination against localities outside the state. Then, in cases where the discrimination is especially serious and obvious, the railroads may find themselves practically, though perhaps not legally, compelled to reduce interstate rates to conform somewhat to local standards. Thus, after the Minnesota rates had become established, the illogical situation that was produced practically forced the Great Northern and Northern Pacific companies to give Superior the same rates to Minnesota territory as to Duluth, the same to Grand Forks as to East Grand Forks, to Fargo as to Moorhead, to Wahpeton as to Breckenridge. In addition they made a number of other interstate readjustments, so as to remove the grossest of the inequalities produced by the Minnesota regulations. But they probably have not restored anywhere nearly all previously existing competitive relations. Many localities still suffer, perhaps not seriously, and Minnesota places still have a relative advantage compared with earlier conditions.

Whether or not the Minnesota rates resulted in permanent discrimination against localities outside the state or brought about a general reduction of rates, they certainly interfered with what common sense would regard as interstate commerce. Does it seem reasonable that one state should have the power to cripple the business interests of another or practically to compel the railroads to adjust their rates to locally fixed standards? The truth is, by means of the low rates, purposely or otherwise, Minnesota protected its own industries against those of its neighbors. Is it wise from an economic, or political and social standpoint, to allow a state to enact such protective measures against the general public?

The Supreme Court apparently accepted the facts as presented by the master and approved by the lower court, but at

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the same time insisted that if relief is necessary it must come through Congress. It claimed as its function the interpretation not the enactment of law. In the present situation, the practical difficulty is that relief from Congress even at best can come but slowly. The Democratic party in power is historically committed to a states-rights line of action. Moreover, the people throughout the country apparently feel, whether in Progressive Minnesota, Democratic Texas, or conservative New York, that the regulation of local traffic is primarily the affair of the state most immediately concerned and would probably vote overwhelmingly against the proposition of definitely transferring that power to Congress.[1]

II

The proposition of Mr. Justice Hughes that the courts should not make laws sounds attractive enough. Had the courts more generally followed that view in the past they would probably have escaped much of the recent popular criticism directed against them. That principle, however, can be followed definitely only *when it is fairly clear what the law is.* But when a statute is framed in extremely general or obscure terms, any decision is bound to make law, whatever the declaration of the court in the matter. In such a case the statute must be moulded as harmoniously as possible into the existing body of established principles, or should be so interpreted as to meet most reasonably the purpose for which it was presumably enacted. But in either case, does not the decision really make law? Is the difference here between a legislative and a judicial act so clear as Mr. Justice Hughes would have us believe?

What was the law in the present cases? There are learned

[1] It is interesting to note that in support of the state's right to fix intrastate rates, the railroad commissioners of eight states, Nebraska, Iowa, Kansas, South Dakota, North Dakota, Oklahoma, Missouri and Texas, filed their brief as *amici curiae*, and the governors of three states, in accordance with a resolution by the conference of governors of all the states, presented by leave of the court an argument in support of the Minnesota position. The states represented as *amici curiae* are among the leaders of the progressive movement. If, then, Progressives are opposed to complete national control of railway rates, what can be expected of Republicans and especially Democrats in supporting legislation to that end?

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persons who supposed it was the contrary to the court's decision. The United States Commerce Court apparently held the opposite view, as of course did the lower court whose decision was overruled.[1] Furthermore, a considerable proportion of the able lawyers in the country had expected a contrary decision. By the decision, the states were definitely secured in the exercise of a power—to fix local rates whatever the effect upon interstate traffic—which previously it was by no means certain that they possessed. Did not the Supreme Court really *make law* whatever the ground taken by Mr. Justice Hughes? If so, should not the court have regarded the interests of the country at large instead of the wishes of the individual states?[2]

The view of this paper is that the decision was not a necessary one. The power that was conceded to the states might and should have been definitely denied them. In support of this view the following three tests are suggested: (1) Was the decision necessary because of the clear and explicit terms of the Interstate Commerce Act and of the Constitution? (2) If not, then was it inevitable because of established principles or a clear line of previous decisions? (3) If not, does it meet most reasonably the situation for which the statute was enacted?

The first test is, of course, the primary one. If the Interstate Commerce Act and the Constitution clearly reserve to the states the power to fix intrastate rates whatever the effect upon general commercial relations, then that should be the end of the matter, either till Congress acts or till the Constitution is amended. Are, then, the terms of the statute and of the Constitution so explicit as to preclude an opposite decision from the one rendered by the court?

As to the language of the Interstate Commerce Act, we must

[1] When the Interstate Commerce Commission considers the interstate rates reasonable, and when local rates fixed by the state are enough lower so as to result in discrimination against places outside, the carriers should regard the state rates as inoperative. See Shreveport Rate Case, The Texas and Pacific Ry. Company *v.* United States, No. 68, U. S. Commerce Court.

[2] There is, of course, a fair probability that the court did not actually feel so certain of the law as it appeared, and that it was influenced in its decision by the brief of the eight railroad commissions appearing as *amici curiae* in the case, and by the argument representing the conference of governors.

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admit the court's interpretation sounds reasonable enough, *when the terms used are taken independently* and not in connection with the general purpose of the law. Section 1 of the statute prohibits unreasonable and unjust rates, but at the same time contains the following proviso:

> That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storing, or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any state or territory as aforesaid.[1]

This proviso, if taken by itself, indicates the desire of Congress in the exercise of its power to regulate interstate commerce not to impose federal control over purely intrastate traffic. But can it reasonably be taken by itself? Section three of the act forbids unreasonable discrimination between persons, localities, and different kinds of traffic, and section four, as recently amended, especially prohibits discrimination as to relative distances.[2] Now, the evils which had been notorious and which led to the passage of the act were due much less to rates unreasonable as such, than to the different forms of discrimination, especially as between places and as to relative distances. Presumably these evils were to be remedied by the act, and Congress must have intended to exercise all the power necessary to accomplish its purpose.

Now the act prohibited discrimination between places or as to distances, but provided that this prohibition should not apply to traffic wholly within the state. But, suppose, as appears in the present cases, the proviso literally interpreted will compel

[1] 24 U. S. Statutes, 379.

[2] Section four is the so-called "long and short haul clause," which provided that no common carrier subject to the provisions of the act shall "charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kinds of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance." 24 U. S. Statutes, 380. This clause was amended in 1910 (36 U. S. Statutes, 547), omitting the phrase "under substantially similar circumstances," also forbidding a larger through rate than the sum of the intermediate rates subject to the act, and prohibiting as large a rate for a shorter as for a longer distance.

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discrimination or necessitate readjustment of interstate rates, then the efficiency of the statute is seriously impaired. The discrimination which was sought to be prohibited is in fact permitted to be increased through state action. May we reasonably assume that Congress planned a joker? Should we not rather believe that it really intended to abolish discrimination and did not plan a proviso which would largely defeat the apparent fundamental purpose of the act?

The proviso might have been construed as a disclaimer, not as an exception. The passage of the Interstate Commerce Act marked an important departure in our national legislation and was bound to be assailed as interfering with a state's exclusive power in the regulation of its domestic affairs. Congress merely disclaimed any intention of such interference. Nevertheless, it prohibited discrimination and intended to exercise its full constitutional power to effect the prohibition. And it unquestionably has the power as against a state to regulate any activity that clearly affects interstate relations.[1]

According to this view, a state could fix rates upon local traffic provided they do not result in discrimination or injury against places outside. If there should be no such discriminatory effects, then the rate would come under the state's exclusive power and Congress could not interfere and by the provision in section 1 disclaimed any intention of doing so. But, if such state action should result in interstate discrimination then it would come under the power of federal control and would be prohibited by the terms of the act.

The proviso, according to this view, merely recognized the exclusive constitutional power of a state in the regulation of its local affairs. The phrase "transportation wholly within one state" was perhaps not well chosen. Still, naturally, that should mean transportation affecting only one state—and that is beyond the power of Congress to regulate.[2] But, when transportation, even if wholly within one state, seriously and prejudicially

[1] This is the view taken by the U. S. Commerce Court. See Texas and Pacific Ry. Co. *v.* U. S., No. 68, U. S. Commerce Court.

[2] For the use in this sense, see Second Employers Liability Cases, 223 U. S. 1.

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affects business conditions outside, surely Congress has the power to regulate and it probably did not intend by the statute to abridge any of the federal power. It probably assumed, as perhaps did all students of railway economics at the time—the point had never received special consideration—that transportation wholly within one state could have no important consequences outside and therefore could not come under federal control.[1] We may ask, would Congress probably have used this phrase if it had foreseen that the rates, fixed by a state and upheld because of the proviso in the present form, would promote just such discrimination as was to be prohibited by the act?

If there is doubt as to meaning of the Interstate Commerce Act bearing on the cases, there is much greater doubt as to the meaning of the Constitution. Article 1, section 8 says: "Congress shall have power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." These terms are exceedingly general and they have been made definite, in so far as they are that, only by judicial decisions in specific cases. Perhaps the recognized separation of power between Congress and the states may be fairly ex-expressed as follows: (1) Regulations directly affecting and interfering with (or substantially burdening) commerce between the states,[2] or requiring uniformity throughout the country,[3] are reserved to Congress. (2) The regulation of internal commerce, affecting or interfering with that between states only indirectly, or remotely, or under the police power even of such interstate commerce as may not require uniformity,[4] may be exercised by the state until Congress intervenes. (3) The regulation of local commerce, with no effect upon commerce between the states, or at most with very little effect, is reserved

[1] This view probably still prevails in Congress, also among the people throughout the country. This is clearly a question of fact, which should be determined not by a congressional or public vote, but by expert investigation.

[2] See Hall *v.* De Cuir, 95 U. S. 488; Field *v.* Barber Asphalt Co., 194 U. S. 623.

[3] See *Ex parte* McNiel, 13 Wall. 240; Welton *v.* Missouri, 91 U. S. 280.

[4] See Cardwell *v.* American Bridge Co., 113 U. S. 210; Austin *v.* Tennessee, 179 U. S. 362.

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to the states.[1] This classification is still exceedingly general, but it is much more specific than the terms of the Constitution.

The Supreme Court placed the Minnesota rates in group two, regarding them as regulations of local commerce with only indirect effect upon that between the states. Now, whether a certain class of regulation falls into group one, two, or three, is determined not by the Constitution itself, but by the point of fact, whether conditions require it to be uniform through large sections of the country, or whether it affects interstate commerce directly, indirectly, or practically not at all. In the present cases, therefore, the Supreme Court in reality determined not a question of the Constitution but merely one of fact—holding that rates are not required to be uniform through large areas, and that a diversity from state to state does not directly affect or interfere with interstate relations. Had the facts been regarded otherwise, the Minnesota rates would probably have been annulled. The facts probably are otherwise, and they ought to have been authoritatively investigated by an expert body before the important decision was rendered.

What were the direct and what the indirect effects of the Minnesota rates? One effect was to benefit jobbers and retailers, and cities, within the state, but a second was to injure competing jobbers and retailers, and cities, outside. The gain within was obtained primarily through the loss imposed outside. Would the view, holding the latter as the direct and the former as the indirect effect be any more arbitrary than the reverse, which was held by the court? In any event, does it seem reasonable that under the Constitution, which placed the control of interstate relations into the hands of Congress, it should be possible for one state to benefit itself at the expense of another?

The idea of direct and indirect is not sufficiently definite for a satisfactory dividing line between powers delegated to Congress and those reserved to the states. Here, as in most economic and social matters, it is all but impossible to determine what are direct and what are indirect consequences. Moreover,

[1] Gibbons *v.* Ogden, 9 Wheat. 195; Veazie *v.* Moore, 14 Howard 574.

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these terms do not appear in the Constitution, and there is no final necessity to employ them. True, they have been used repeatedly in the demarcation of powers between Congress and the states, but their use has probably been at least partly accidental, determined by a particular situation, or by a special idea in the mind of the court, not by general principle. Judge Sanborn, whose decision in the present cases was overruled, held that any state regulation which seriously interfered with, or placed a substantial burden upon the general commerce, encroached upon the exclusive domain of Congress and was therefore null and void.[1] Practically the same language has been used in a number of cases by the Supreme Court.[2] In reality, the two sets of expressions, are, or should be, identical in meaning, and in fact they had been clearly so used by the Supreme Court.[3]

The expressions "direct" and "indirect" effect, in the control of commerce, have probably never been given the narrow and technical meaning which they carry in the present decision. The division of powers between Congress and the states was left by the Constitution in very broad lines. More exact determination has proceeded, and could proceed, only upon what appeared reasonable under the special circumstances before the court. If the terms used in the process of fixing more exact lines are followed by a too rigid meaning, there is a strong probability of a subsequent unreasonable delineation being es-

[1] 184 Fed. 770.

[2] See Hannibal, etc. Ry. Co. *v.* Husen, 95 U. S. 472, Shollenberger *v.* Pennsylvania, 171 U. S. 13, Ludwig *v.* Western Union Tel. Co., 216 U. S. 162.

[3] See especially Oklahoma *v.* Kansas Natural Gas Co., 221 U. S. 261. In Louisville, etc. Ry. Co. *v.* Eubank, 144 U. S. 35, Mr. Justice Peckham said: "We fully recognize the rule that . . . . state legislation upon interstate commerce must be *direct, and not merely incidental and remote;* but it seems to us that where the necessary result of enforcing the provision may be to limit or prohibit the transportation of an article from without the state to a point within, or from a point within to a point without the state, interstate commerce is thereby affected, and may be thereby to a certain extent *directly* regulated, and in that event the effect of the provision is *direct and important and not a mere incident.*" Is *direct* the converse of *incidental* or *remote?* And is it synonymous with *important?* The italics in the quotation are the writer's.

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tablished. This seems to have happened in the decision under review.

The expressions used are of no fundamental significance, and they should always be left sufficiently elastic to allow the results of a decision to be tested by the standard of reasonableness. According to this standard, should a state have the right to fix local rates whatever the consequences upon business conditions outside? It is their consequences, not the form in which the rates appear, nor the intention with which they are formulated, that should determine their constitutional validity.[1] If they result in discrimination against places outside the state, they should by that fact be rendered invalid, whatever their beneficial effects within. That a state should be allowed to benefit itself at the expense of a neighbor appears as an unreasonable situation under our Constitution.

It may be worth while to ask, what did the framers of the Constitution intend? Of course, they could not possibly have foreseen the present intrastate rate situation, as they could not anticipate the multitude of the specific questions that have arisen over the division between state and congressional powers. It was just because they could not foreshadow all future problems that they left the division of powers in broad terms and depended upon future reasonableness to determine such finer distinctions as might be needed.

However, the above question may be answered clearly enough from analogy. The control of interstate commerce was reserved to Congress primarily because of the experience with taxes and tariff duties during the Confederation. Each state had placed duties, special taxes, and other regulations, upon imports with the object of benefiting its own interests, whatever the consequences to business at large. Such proceeding naturally proved intolerable, and it was chiefly for this reason that the control of the interstate commerce was reserved to Congress.

The present intrastate rate situation promises to be clearly analogous to the tariff and tax situation during the Confedera-

[1] Western Union Tel. Co. *v.* Kansas, 216 U. S. 27; Ludwig *v.* Western Union Tel. Co., 216 U. S. 162.

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tion. A state can get a clear advantage from special local rates only if they are relatively lower than those prevailing upon traffic in general; then, as previously explained, local jobbers and cities obtain a substantial monopoly of the home business. Then, if interstate rates are reduced so as to restore the previous relative level, practically all advantage is gone—except in so far as the profits of the railroads are permanently diminished through the reductions, and outside competitive interests are seriously crippled through the imposed discrimination. The immediate advantage sought through the low rates is to secure for the state business which would otherwise go outside.

Minnesota and all the states which have provided special local rates were probably guided more or less consciously by the above consideration. By the local reduction they expected to keep business at home; retailers of the state would find it advantageous to purchase from home jobbers; local cities would become distributing centers; real-estate values would increase, and general prosperity would be enhanced.[1] The Texas Railway commission openly admitted that the local rate schedules were fixed to protect jobbing interests and cities within the state against the competition of Louisiana.[2] What shall prevent the latter state from retaliating? Why shall the Dakotas not protect themselves against Minnesota? A considerable number of states have already availed themselves of these protective measures, and there is a fair probability of extensive rivalry among the states in forwarding their own interests in this way as against each other. Did the framers of the Constitution suppose such a situation possible when the control of the general commerce was especially reserved to Congress?

If the decision, then, was not necessitated by the clear language of the Interstate Commerce Act or of the Constitution, was it practically inevitable because of previous cases? In regard to this point Mr. Justice Hughes says:

[1] At bottom this legislation amounts to the protection of home industry, and it has the same motives that have been behind our national protective systems; in the long run the arguments are probably equally fallacious.

[2] See 23 Interstate Commerce Commission Reports, pp. 33, 35–36.

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The decisions of this court since the passage of the act to regulate commerce have uniformly recognized that it was competent for the state to fix such rates [intrastate rates], applicable throughout its territory. . . . And the decisions recognizing and defining the state power wholly refute the contention that the making of such rates either constitutes a direct burden upon interstate commerce or is repugnant to the federal statute.

A number of cases are cited showing that the state's rate-making power has been considered repeatedly by the court and has always been sanctioned.

However, the special point in the present case was never before the court so as to get serious consideration. It is true, the *general power* to fix intrastate rates has been repeatedly affirmed or assumed by the language of the court. But the legality of such rates if they substantially burden interstate commerce—either discriminating against places outside of the state, or seriously interfering with carriers in employing their property located beyond the borders of the state and so depreciating its value, or necessitating the reduction of interstate rates—had never been squarely before the Supreme Court and had never been specifically determined. The general power may very well be allowed, providing the rates actually fixed do not seriously upset commercial relations between states. But surely such power does not imply that it may be used whatever injury be brought upon neighboring states.

The majority of the cases cited by the court raised the point of whether the rates in question were reasonable *per se* and not whether they had any effect upon interstate commerce. They show clearly enough that a state has the general power to fix intrastate rates; they show also that this power cannot be used to the extent of confiscating a company's property within the state; but they do not show one way or the other whether it can be used to interfere with business outside the state. That point was determined only by the present decision.

There are two cases, however, which perhaps deserve special consideration in so far as they suggest possible exceptions to the proposition just stated. In Ames *v.* Union Pacific Railway

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Company,[1] the constitutionality of certain Nebraska rate laws was assailed. The complainants urged that the rates in question were confiscatory and *that they interfered with interstate commerce*. The latter point was definitely overruled by Mr. Justice Brewer who presided in the case. The first point, however, was sustained; the rates were found confiscatory and were therefore declared invalid. On appeal to the Supreme Court of the United States the decree was affirmed. But the affirmation covered merely the point of confiscation; the effect of the rates upon interstate commerce was not before the Supreme Court—indeed on this point the appellant's contention had been sustained below. The point was not referred to once by Mr. Justice Harlan in his opinion in the case, covering thirty-five pages.[2] Moreover, it was not especially urged by the complainants in the lower court and was supported by slender evidence; it appeared rather as a secondary consideration, the point especially supported being that of confiscation. But in any event, while the point was definitely upheld by a lower court, it did not come before the Supreme Court of the United States.

The second case deserving special consideration is that of Louisville and Nashville Railroad Company *v.* Kentucky.[3] The contention was that the Kentucky long and short haul clause was unconstitutional because (among other reasons) it operated "as an interference with interstate commerce." (The law was construed to apply only to traffic wholly within the state.) This point was treated as one of secondary importance, being but scantily supported by facts, and receiving only two short paragraphs in the opinion of the court. Mr. Justice Shiras said:

> It may be that the enforcement of the state regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may somewhat [*unimportant?*] affect commerce generally; but we have frequently held, that such a result is too remote and indirect [*trifling?*] to be regarded as an interference with interstate commerce; that the interference with the com-

[1] 64 Fed. 165, U. S. Circuit Court, District of Nebraska.

[2] See Smyth *v.* Ames, 169 U. S. 466.

[3] 183 U. S. 503.

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mercial power of the general government to be unlawful must be direct [*substantial?*], and not merely the incidental effect of enforcing the police power of the state.

Certainly this case cannot be considered as covering the point in question. The effect upon interstate commerce was evidently considered remote and inconsequential. Suppose the point had been supported with an abundance of facts as in the Minnesota cases, showing that the burden or interference was substantial, would not the case have been altogether different? The point was simply brushed aside by the Supreme Court, was not seriously considered, and the statute was allowed to stand because of the state's general power to regulate intrastate affairs.

On the other hand, in a number of cases the Supreme Court has used language which would indicate that a state may not establish regulations which seriously interfere with interstate relations. In some respects similar to the Minnesota cases is that of Louisville and Nashville Railroad Company *v.* Eubank.[1] This case, as the one referred to in the previous paragraph, arose out of the Kentucky long and short haul clause, which prohibited a higher rate for a distance wholly within the state than for a longer distance (the shorter being within the longer, in the same direction, over the same line), even if the latter were partly outside of the state. The court considered this aspect of the law unconstitutional, although the rates to be regulated were for distances entirely within the state. Mr. Justice Peckham said: "The fact which vitiates this provision is that it compels the carrier to regulate, adjust, or fix his interstate rates with some reference at least to his rates within the state." The effect claimed upon interstate commerce was amply sustained by facts. Under the law, to secure certain interstate traffic, the railroad was compelled to reduce its local rates throughout the state. Otherwise, it was compelled to raise its interstate rates and thereby sacrifice the traffic which it had previously carried. The court rightly asked: "Is not a law from which such neces-

[1] 184 U. S. 27.

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sary and direct (*why direct?*) consequences result, a regulation in effect by the state, of the commerce which ought to be free therefrom?"

Observe the parallel between the facts in this and the Minnesota cases. Here the carrier was practically compelled (perhaps not absolutely legally) to regulate his interstate rates "with some reference at least" to the intrastate schedules, which fact made the law to that extent unconstitutional. In Minnesota there was exactly the same situation; the rates within the state practically (perhaps not absolutely legally) necessitated a readjustment of interstate rates, or an abandonment of certain interstate traffic. The only difference between the two cases is that in Kentucky the intrastate rates were not fixed in terms of absolute maxima as in Minnesota, but were to be relative to general rates charged by the railroad. Was this provision an especially vitiating one? Does a regulation not seem rather more reasonable if it merely requires local rates to be relative to general rates as in Kentucky, than if it fixes them relatively upon a much lower level as in Minnesota, and so actively discriminates against places beyond the state? Kentucky merely sought to avoid discrimination against itself, while Minnesota *directly* induced discrimination against the outside. Which was the greater offense? Logically, if the Kentucky provision was wrong, the Minnesota rates likewise should have been set aside—granting that they in fact compelled a carrier "to fix his interstate rates with some reference at least" to Minnesota standards.[1]

If the decision was not necessitated by the clear language of the Constitution or by a definite line of previous decisions, does it meet reasonably the purpose for which the Interstate Commerce Act was passed? This test has really been applied in the discussion of the others, but perhaps the position of this paper will be rendered still more clear by a few additional considerations.

[1] In Ludwig *v.* Western Union Tel. Co., 216 U. S. 162, Mr. Justice Harlan said: "If a statute, by its necessary operation, really and substantially burdens the interstate business of a foreign corporation seeking to do business within the state . . . . . then it is unconstitutional and void, although the state legislature may not have intended to enact an invalid statute." For similar expressions, see Western Union Tel. Co. *v.* Kansas, 216 U. S. 27, and Mugler *v.* Kansas, 123 U. S. 661.

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We may reasonably assume that the act was passed primarily to procure for the country at large a network of rates which should be reasonable in themselves, fairly proportional as to distance, with due regard, however, to general and local traffic conditions. The Interstate Commerce Commission has sought, unquestionably, with its utmost power and ability, to establish such rates. So far as possible, the rulings of the court should aid in the progress of this work. But, it seems, the present decision will hinder rather than assist in this matter.

Apparently, as a result of the decision, hereafter in its rate orders, the commission must have clear regard for the various state regulations, while, rationally, it should pay no attention to state lines, aiming always and everywhere only at reasonableness and the elimination of discrimination. State borders do not furnish adequate grounds for differing rates. Traffic conditions are substantially the same throughout such vast areas as the Northwest. If we actually intend through federal legislation to procure reasonable rates and to do away with discrimination, we must have uniform regulation through wide regions, with proper regard, however, to inter-relation of different sections of the country. The commission should not be hampered by the enactments, various and conflicting, of local legislative and regulative bodies.

Let us consider further how utterly unreasonable our present rate situation is—providing we really wish such a reasonable and non-discriminatory network of rates as the Interstate Commerce Commission has sought to establish. Control is decentralized and overlapping. Suppose the interstate rates in all directions through a certain state (say Minnesota) were reasonable and that intrastate rates had been correspondingly adjusted. Then suppose the local rates were reduced on the average twenty-five per cent by the state commission (as in Minnesota), and so immediately established discrimination against the neighboring states. To prevent this, the Interstate Commerce Commission must quickly order a general reduction so as to restore the previous relative interstate relations. Then, suppose another state in the same region (say North Dakota) exercises its rate making power, cutting below the then generally established

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standards, and again immediately producing discrimination against other states. Forthwith the commission must order a general reduction to correspond with the newly ordained local level, and, unless the resulting discrimination be allowed to continue, it must speed along so as to keep interstate rates conforming to the lowest intrastate standards that may be allowed by the courts.

The only restraint upon the state's power is that the local rates must not be confiscatory, i. e., they must allow reasonable returns to the railway property employed in the intrastate business. The Interstate Commerce Commission has no voice in the determination of this matter. State fixed rates are assumed to be reasonable, unless before a court they are proven otherwise. They will be declared void only if they are clearly shown to be confiscatory, and the burden of proof rests definitely upon the complainant.[1]

Now, in any case before a court, the margin between a rate which may be reasonable and one which is clearly confiscatory, is necessarily so wide that a local reduction of ten to twenty-five per cent below previous standards is always likely to be allowed. But while such a reduction, applied solely to the intrastate business, could not be clearly proven confiscatory, it would in all probability result in seriously upsetting prevailing interstate relations. And this general reduction—applied to the interstate business—would very likely prove confiscatory and therefore unconstitutional. Still, this fact would not affect the validity of the local rates, which may be tested only in reference to the carrier's property devoted to the intrastate business.

Manifestly, under present conditions, the Interstate Commerce Commission cannot possibly maintain both reasonable, non-confiscatory, and non-discriminating rates—i. e., if the states choose to exercise the power conceded by the court. Suppose that interstate rates complied fairly well with the desired ideal, then a considerable local reduction would immediately upset it. If the Interstate Commerce Commission ordered a general reduction to correspond with that applied locally, then the new interstate

[1] The Minnesota Rate Cases, 230 U. S. 352.

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rates would very likely prove confiscatory and illegal. But, if it were not to order such a general reduction, as repeated again and again, there would result immediate discrimination against outside points. In all common sense, is not such a situation, if we really want reasonable rate control, intolerable! Can we possibly argue that the decision meets most reasonably the situation because of which the Interstate Commerce Act was passed?

The question may be raised, suppose the decision had been otherwise, what power would the states have left in the control of railroads? Frankly, they would have much less than they now do possess. But, the point is, the diminution would probably result in a substantial advantage to the public at large. The states could still regulate rates, but only in such a way as not to interfere, or to interfere very little, with existing general commercial relations. Consequently, they practically would be compelled to coöperate with the Interstate Commerce Commission in promoting rate regulations. This would be a situation indeed highly to be desired compared with the present, when a multitude of bodies are making rates, each proceeding independently of what any other may be doing.

Apart from the regulation of rates, however, a state would still have control over conditions of service that affected particularly local well-being. It could still legislate in reference to the establishment of safety devices and could enact any regulation for protecting or promoting the welfare of its people. In general its police power would remain intact. But, in the exercise of this power, it would always have to regard this proviso, that it may not derive a benefit at a prejudice to the outside, or even at unreasonable expense to the railroads.

As a matter of fact, a state probably can derive but little advantage from rate-making power independent of the Interstate Commerce Commission, unless this power be used to the injury of other states. If general rates are reasonable, then local rates will almost necessarily adjust themselves to the same relative level. This tendency to adjustment results, as is well known, from the wide competition between far separated places and regions which dispose of their product and procure their sup-

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plies through the same markets. Thus, a railroad practically cannot maintain for a long period of time a much different level for local than for general rates. Moreover, if an arbitrary difference should be maintained, the Interstate Commerce Commission, if sustained by the Supreme Court of the United States, would be disposed to protect against discrimination resulting from a comparison of intrastate with interstate rates, as well as from that due to interstate compared with other interstate rates.[1]

The reasonable division of power between Congress and the states should be according to the balance of advantage that may be procured. In regulation of safety devices, or of any other matter where the local welfare may be advanced without injury to the interests outside, a state should reasonably have the power to regulate. But in matters where the balance of advantage to the public at large requires considerable uniformity of regulation transcending state lines, then the power to regulate should be restricted to Congress. For the most part, this view accords with accepted constitutional decisions. Applying this principle to railway control, rates appear to be so interdependent that any considerable shifting affects the relative prosperity of even far separated localities. Consequently, the avoidance of discrimination requires a uniformity of regulation which can be obtained only through centralized control. The regulation of other matters, which do not require extensive uniformity, may perhaps be left with a balance of advantage to decentralized control.

Ideally, in matters of railway rates at least, the state commissions should work in coöperation as subsidiary bodies to the Interstate Commerce Commission. The latter body should have complete control over all rates throughout the country. But, because of the vast area, the single commission at Washington probably could not keep adequate oversight of conditions everywhere. Consequently, local commissions are practically necessary; they should keep in close contact with the working relations between the railroads and the public. They should receive complaints and should investigate the cause; they should

[1] See 23 Interstate Commerce Commission Reports, 31.

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have the power to make investigations even without first receiving complaints. They should report the facts to the central commission, and, if reduction or revision in prevailing rates seemed desirable, they should offer recommendations to that end. Indeed they might well independently work out desirable specific rates, but, before placing them in force, such rates should receive the direct approval of the Interstate Commerce Commission. In this way, there would always be a fair regard for varying local conditions, but at the same time there would be central and systematic control of rates throughout the country.

Students of railway economics are perhaps fairly agreed that the plan here crudely outlined represents the ideal of rate control at least, although there is no clear reason why railroad matters throughout should not be regulated in the same way. The present decision, instead of leading directly toward this ideal, is clearly a step in the opposite direction, establishing diffused instead of centralized control.

But this ideal, if it really be such, should not be abandoned. The court points to Congress for any reform that may be desired. However, that body is not likely to interest itself seriously in the proposed reform without full acquaintance with the evils of the present situation. While economists, especially those particularly interested in railway affairs, feel reasonably certain what the evils are, they have no tsuch an abundanoe of concrete facts as perhaps would be convincing to Congress or to the public at large. The first step toward the reform is probably an exhaustive investigation and report by an expert public body, whether by the Interstate Commerce Commission or by a special commission provided by Congress. Such a commission should investigate thoroughly and impartially the entire subject of rates, with special reference to their interrelation and to the effect of changes upon the relative prosperity of competing communities and sections of the country. *It is the fact of this effect* that should determine the system of rate control sanctioned by Congress.

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DIRECT LEGISLATION IN ARKANSAS

ARKANSAS may be classed as a rock-ribbed Democratic state, since it always supports the Democratic party. No Republican has been elected governor since the overthrow of the carpet-bag régime in 1874. Few Republicans secure seats in the legislature, though occasionally some are elected to office in counties and towns normally Democratic. In 1904 (September), the vote for governor was 91,991 Democratic, 53,898 Republican, 3891 all others; for president (November), 64,434 Democratic, 46,860 Republican, 5127 all others. Since then there has been no great variation. In 1912 in the September election the vote stood: Democratic 109,825, Republican 46,440, Socialist 13,384. At the November election the Democratic electors received 68,938 votes, the Republican 24,467, the Progressive 21,673, the Socialists 8,153 and the Prohibitionists 898. In the gubernatorial race the Democrats polled 64 per cent of the vote in a total of 169,669 against 61 per cent in a total of 149,780 in 1904; in the presidential race 55 per cent, in a total of 124,029, the percentage being the same as in 1904.[1] This narrow margin, especially in the presidential election, would not seem to justify the statement that Arkansas is a rock-ribbed Democratic state. Yet, if all opposition parties were to combine, they would have practically no chance of carrying the state, for the thought of such a possibility would bring out a considerable reserve force of Democrats.

Arkansas is not commonly regarded as one of the so-called "progressive" states. Down to 1908 only eight amendments to the constitution of 1874 had been adopted. The first (1885) was an act of repudiation, the second required a poll-tax receipt as a qualification for suffrage, the third and sixth were administrative, the fourth empowered the legislature to correct abuses and prevent unjust discriminations by transportation companies,

[1] For election returns see Reports of Secretary of State (Little Rock) for the year indicated.

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the fifth provided for a road tax, the seventh reënacted section 16 of the constitution providing pay of legislators, and the eighth increased the amount of taxes which may be raised for school purposes. Of these amendments certainly not more than two or three are of the type commonly denominated "progressive."

In recent years the chief issues in state politics have been the railroads, the state capitol, the deficit, state-wide prohibition, and the legislature. These have not been issues as between the Democratic and Republican parties; indeed, little consideration is given to what the Republicans want. The issues have hardly caused factions within the Democratic party, but they have been used as convenient tools in personal fights for office. The railroads have been pretty well excluded from the legislature since 1907, in which year the passenger and freight-rate reduction laws were passed. Everybody wanted a new capitol, but the politicians divided on the manner of its building. For years the expenditures of the state have exceeded its revenues. All candidates for governor have agreed that more revenue must be raised without increasing the taxes of the people, but each has denounced the specific proposal of the others.

The liquor question has come nearer being a real issue than any of the foregoing, though most candidates have declined to take a decided stand on the matter of state-wide prohibition. Every two years each county votes on the question of license or no license. For some time the total vote against license has been considerably in excess of that for it. Encouraged by this the prohibitionists tried several times to get the legislature either to pass a state-wide law or to submit a prohibition amendment, but the liquor interests were always able to defeat every such measure. This led to a demand for the initiative.

For several years there has been a growing dissatisfaction with the legislative output, both on account of its quantity and quality, and with the length and consequent expense of the sessions. In 1901 the legislature passed 218 general and local acts, 4 private acts and 28 resolutions and memorials, covering 413 pages, exclusive of the index. The following year there was a slight decrease in the number of bills enacted, but the number of pages required to print them rose to 486. In 1905

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there were 350 general and local acts, 14 private, and 13 resolutions, covering 843 pages. Two years later they had risen to 460 general and local acts, 14 private, and 22 resolutions and memorials, covering 1273 pages. The session of 1909 gave a slight reduction in the number of acts and pages covered, but that of 1911, the last held under the old conditions, was a record breaker. This time the output was so great that it had to be collected in two volumes. One of them contains 300 local and special acts, and 40 resolutions and memorials, covering 1363 pages; the other contains 162 so-called general acts, though many of them are of a local or special character, covering 595 pages, making the total output 1958 pages.

That the gain has been in local and special acts is easily shown. Of the 218 acts passed in 1901, 109, or exactly half, may be classed as general acts, and these include appropriations. Since then the ratio has risen until in 1911 there were only 128 general acts as against 334 local, special, and private acts, resolutions and memorials. In 1901, 16 local acts were passed relating to school districts, and 6 relating to levee and drainage districts. In 1911, the figures were: special schools, 70; levee and drainage, 37; roads, 39, and this too, in spite of the fact that a general act was passed in 1909 empowering the county judge to manage the creation of special school districts. No subject seems to be too trivial for legislative action, whether it be prescribing the length of fish which may be caught out of Cabin Creek, or providing an extra stenographer for the circuit judge in the ninth circuit, or the size of a railroad caboose, or making four wires a lawful fence in one corner of Saline County, or raising the salary of the clerk of Washington County, or defining baggage and providing for its transportation and prompt delivery, though there is a state railroad commission.

While the last decade has seen no great change in the length of the sessions, there was a general feeling that the legislators stayed too long in Little Rock and spent too much money. The increase in cost was especially noteworthy about the end of the period. For the ten-year period, the sessions lasted about 116 days and cost from $115,000 to $125,000. Curiously enough, the most unpopular of all the sessions, that of 1905,

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was the least expensive. The last of the practically unlimited sessions, that of 1911, cost nearly $200,000.

Another great cause of discontent was the widespread belief that the legislature was in the hands of the special interests and not responsive to the will of the people. This was especially true in the session of 1905 and to some extent in the sessions of 1907 and 1909. There undoubtedly was corruption in connection with the building of the state capitol, and the railroads were thought to be too powerful in Little Rock. Several members of the legislature, mainly from the Senate, found themselves under indictment for bribery.

All of these circumstances produced genuine discontent with legislative conditions. Yet there were no constructive evidences of this discontent until near the end of the period. Certainly there were no great signs of a revolution. The discontent lacked organized, constructive leadership. One of the first proposals for a remedy was a House resolution in 1905 for an amendment providing for quadrennial instead of biennial sessions. This received 40 affirmative votes, but the resolution failed, although only 37[1] votes were recorded against it, since 23 members failed to vote and it requires the vote of a majority of the elected members, 51, to pass an amendment. During the same session Mr. Wm. A. Anderson, of Benton County, proposed the initiative, referendum, and recall of judicial decisions. His resolution provided for local legislation by declaring that the legislative power of counties and towns "is inherent and shall be vested in the electors" thereof, subject to laws of a general nature and having uniform operation throughout the state. There were to be two kinds of referenda. First, one fourth the members of either house could, by petition filed with the secretary of state, force the reference of enacted or unenacted measures to the people. Second, 5000 electors could, by petition, compel the reference of acts. In either case the measures were to be become laws, if ratified by a majority of those voting on the measure. If the supreme court declared any act of the legislature unconstitutional, then the governor

[1] House Journal, 1905, p. 476.

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must refer it to the electorate. If sustained by a majority vote, then the act should stand, the decision of the court to the contrary notwithstanding.[1] The resolution appears to have received scant consideration.

This proposal for the recall of judicial decisions is interesting, coming as it does several years before Mr. Roosevelt startled the country with his proposition, which most people regarded as both novel and radical.

Early in the session of 1907, Senator E. R. Arnold, of Clark County, introduced the initiative and referendum as finally passed two years later, except for the "joker" clause to be explained hereafter. Nearly three months later this proposal came to a vote and was defeated, 8 in favor to 15 against, 12 not voting, Senator Arnold among them.[2] In the House a proposition was offered to allow five amendments to be submitted at one time and to require for the adoption of any amendment only a majority of the votes actually cast. This proposition received 38 votes for it, 36 against it, 27 not voting.[3]

How much sincerity there was back of the legislative support of these propositions it is impossible to determine, but they undoubtedly were offered in response to a popular demand and pressure for some sort of reform. In his campaign for the gubernatorial nomination in 1907–8 the Hon. George W. Donaghey roundly denounced legislative corruption and championed the initiative and referendum, though the latter was by no means his chief issue. In the session of 1909 Senator Arnold reintroduced his resolution and secured its passage in the Senate. In the House a clause was inserted with the intention of providing for local legislation. The measure as finally submitted to the electorate is as follows, the House addition being printed in italics:

The legislative powers of this state shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives, but the people *of each municipality, each county and of the state*, re-

[1] House Journal, 1905, p. 559 *et seq.*
[2] Senate Journal, 1907, pp. 61, 311.
[3] House Journal, 1907, p. 484 *et seq.*

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serve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls as independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly.

The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon.

The second power is a referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by the petition signed by five per cent of the legal voters or by the legislative assembly as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded.

The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular general elections except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon and not otherwise. The style of all bills shall be: "Be it enacted by the people of the state of Arkansas." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for the office of governor at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be basis on which the number of legal votes necessary to sign such a petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he and all officers shall be guided by the general laws and the acts submitting this amendment until legislation shall be specially provided therefor.

While this measure was before the people, the opponents of the initiative and referendum, among them some of the most distinguished members of the bar in the state, attacked it from every angle, but the chief attack was upon the so-called "joker" clause, which is here printed in italics. Ridicule was heaped

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upon this clause and the assertion was freely made that, if it meant anything, it would allow counties and municipalities to repeal state-wide laws and even to amend the constitution, so far as applicable to the localities. This was denied by the advocates of the amendment, who, while not altogether pleased with its wording, insisted that it must be interpreted in harmony with the constitution and common sense. The result of the election was the passage of the amendment by a vote of 91,367 to 39,111.[1] It was commonly supposed that the view of its advocates had prevailed with the people when they voted. Since then, however, it has been seriously maintained that the people ratified the amendment for the very reason that it gave localities unlimited powers of legislation.[2]

The next session of the legislature, that of 1911, was notable by reason of its length, expense, output, and factional strife. The state was now facing a deficit of nearly $500,000. How to meet it presented the most important question before the legislature. The deficit was due in part to an unwise reduction of the levy in 1905 and to subsequent natural increases in expenditures, but more to the wretched system of assessment and collection, which was but little better than passing around the hat. Two years before, the governor had, after a hard fight, secured the creation of a tax commission. This commission, in consultation with him, now brought forward a revenue bill which passed the House. The Senate, however, now very much at odds with the governor, refused to pass it, and the legislature adjourned, after a session of 121 days, without having done anything for the revenue system beyond providing for county boards of equalization and enlarging somewhat the powers of the tax commission. Governor Donaghey soon called a special session, which sat nineteen days and finally passed a revenue bill, commonly called the Turner-Jacobson bill.

The regular session had refused to pass any law for carrying the initiative and referendum into effect. The special session now passed the so-called Enabling Act. This act provided that eight per cent of the legal voters of any county, or any city

[1] Report, Secretary of State, 1909–12, p. 68.

[2] Jacobson, in Brief for Appellees, Hodges *v.* Ringo, pp. 5–9.

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or incorporated town, might propose any measure, not inconsistent with the general laws or the constitution of the state, applicable only to such county or municipality. This must be filed with the secretary of state. If the secretary should refuse to submit it to popular vote in the county or municipality affected, then any citizen might apply to the circuit judge for a writ of mandamus to compel him to act. If it should be shown that any petition was not legally sufficient, the judge should enjoin the secretary from submitting the proposed measure.

It is not within the province of this paper to discuss the merits of the Turner-Jacobson bill. Property on the tax books was assessed at from 10 to 100 per cent, and a large amount of property was not on the books at all. The main object of this act was to secure a better assessment. In order to prevent too radical an increase of taxes, a sliding scale was adopted, the rate to decrease as the total valuation rose above a certain sum. Unfortunately the state capitol tax, a temporary levy, was used as the basis of computation and the enemies of the measure said this meant that the capitol tax was to be permanent. The legislature had passed this half-way measure very unwillingly, and had not added the so-called emergency clause which excluded from the operation of the referendum such laws as might be deemed necessary for the immediate preservation of the public peace, health or safety. Opponents of the act now denounced it as increasing the tax burden of the people and invoked the referendum and before the expiration of ninety days had secured the necessary number of signatures.

However, the state tax commission insisted that the act was already in force. They had been doing their best to get the assessment of a certain corporation in Little Rock raised, but the county assessor refused to do their bidding. Having the support of the governor they now employed attorneys and asked the chancery court for a writ of mandamus against Assessor Moore, to compel him to recognize the Turner-Jacobson act as in force. At this juncture the attorney general, Hal L. Norwood, intervened and moved that the suit be dismissed. His motion was granted and the tax commission appealed. Their attorneys argued that the law was in force, for it was ap-

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proved June 29, 1911, and specifically mentioned certain things to be done in 1911. If it could be held up by a referendum, it would not be possible to carry out these provisions, for the election would not take place until September, 1912. Further, the legislature had added: "This act shall take effect and be in force from and after its passage." At the time of its enactment there was no way to submit it to the referendum, the Enabling Act not having been passed. The attorney general contended that, since the legislature had not added the emergency clause, the act could not become effective until 90 days after the adjournment of the legislature, the time allowed by the recent amendment for filing reference petitions.

The suit was filed in the chancery court a few weeks after the act was approved. The supreme court rendered its decision March 11, 1912. Mr. Justice Kirby, speaking for the court, held that the recent amendment to the constitution providing for a referendum (No. 10) was self-executing, the amendment itself having provided that, in submitting measures, the secretary of state should be guided by the general laws and the acts submitting this amendment until legislation shall be specially provided therefor." This being true, no act could become effective until 90 days after adjournment of the legislature, unless declared "necessary for the immediate preservation of the public peace, health or safety." The expression that the act should take effect "from and after its passage" meant "no more than that such a law should be operative from the time when the formalities of enactment were actually completed," and could become effective under the constitution. "The fixing of dates in the act for the performance of certain things before the act could become operative under the constitution, unless within the exception, does not indicate an intent on the part of the legislature to put into effect a law necessary for the preservation of the public peace, health, or safety." Therefore the act could not take effect until 90 days after the final adjournment of the legislature, or after its approval by the people, in case the referendum was invoked.[1] For this reason the suit was dismissed.

[1] State *ex rel.* Arkansas Tax Commission *v.* Moore, 145 S. W. 199 *et seq.*

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The constitutional amendment providing for the initiative having been adopted and the act for carrying it into effect having been passed, people who had been unable to get what they wanted from the legislature began to bestir themselves. There were fights on in several counties over the location of court houses. Certain voters in Dallas County drew up what they called "An Act" to remove the county seat from Fordyce to Princeton and preceded the first section by, "Be It Enacted by the People of the State of Arkansas," as amendment No. 10 directed, secured signatures to the petition exceeding eight per cent of the voters of the county, and filed it with the secretary of state for submission to the electorate of Dallas County. In Montgomery County about the same thing was done, the enacting clause there reading "Be It Enacted by the People of Montgomery County, Arkansas." Section 2041 of Kirby's Digest forbids the playing of baseball on Sunday. For several years unsuccessful attempts had been made to get the legislature to legalize Sunday baseball in Little Rock. A petition for this purpose bearing the signatures of eight per cent of the voters in the city was now filed with the secretary of state and he was asked to submit the matter to popular vote in the city of Little Rock. From Hot Springs came a similar petition for legalizing betting on horse races, though all such betting throughout the state was forbidden by Act of February 27, 1907. From Sebastian County came a petition in the form of an act fixing the salaries of the county officials. It bore signatures amounting to eight per cent of the legal voters of Sebastian County and was filed with the secretary of state for submission to the electorate of the county.

All of these measures, Earl W. Hodges, secretary of state, acting upon the advice of Hal Norwood, attorney general, refused to certify for submission to the localities concerned. The friends of the measures at once invoked their rights under the Enabling Act and asked the circuit court of Pulaski County for a writ of mandamus to compel the secretary of state to submit them to the voters. The writ was granted, whereupon the secretary appealed to the supreme court. His reasons for refusing were substantially the same in all cases. He held that

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Amendment No. 10 did not contemplate the submission of any act not supported by signatures amounting to eight per cent of the total number of votes cast for governor in the entire state at the last preceding election. This was equivalent to holding that the section of the Enabling Act directing submission of any measure upon petition of eight per cent of the voters of the locality affected was null and void, though the secretary denied raising the question of constitutionality. He also held that the enacting clause in No. 10 applied only to the whole state. It was further objected that the proposed measures violated the Enabling Act itself under which he was asked to submit them, since they would contravene general laws or the constitution, in some cases both. For example, the Dallas County proposition would alter two sections of the constitution (section 3, article 13, and section 28, article 7) and repeal several general laws on county seats so far as they applied to Dallas County. The power to do such things, it was insisted, was an attribute of sovereignty, and counties and municipalities, never having been sovereign could not "reserve" such powers. The rest of the acts would repeal general laws or legislative acts of local application. But it never was intended to allow localities to repeal even local laws of the legislature, for they are the acts of the entire state and the entire state must be consulted about their repeal. For example, the state, through its legislature, had forbidden the sale of whiskey within ten miles of the state university and the whole state would be interested in the repeal of that law. All of the acts, being in contravention of the constitution or general laws, were not of such a character as to be submitted.[1]

Counsel for the plaintiffs maintained, on the other hand, that the secretary of the state was only an administrative officer and had no right to raise the question of constitutionality; that if the proposed measures violated the Enabling Act, then that clause of the Enabling Act forbidding the submission of measures contravening state laws was null and void, since this very

[1] Hodges *v.* Dawdy, Abstract and Brief for Appellant, pp. 6–7, 34–5; Hodges *v.* Ringo, Abstract and Brief for the Appellant p. 10.

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right was vested in counties and towns by Amendment No. 10. One attorney said that the amendment was adopted with the understanding that it "would authorize the people of any county, any incorporated town or city, to change any provision of the general laws of the state or the constitution at pleasure."[1] In support of the proposition to legalize Sunday baseball in Little Rock it was argued that the legislature had the right to exempt any locality from the operation of a general law and that, since the adoption of Amendment No. 10, "the people" (of the locality) "can do the same."[2] The term "majority of the legal voters," it was held, meant a majority of those actually voting. A man might be a qualified elector, but was not a voter unless he voted.[3]

The supreme court upheld practically every contention of the secretary of state and his attorneys. They declared that "officers of the executive department are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution." In this case, however, the secretary was merely exercising his judgment as to whether the proposed measures fell within the terms of the recent amendment and of the Enabling Act. He decided that they did not, on the ground that the insertion of "each municipality" and "each county" had added nothing to the meaning of the amendment. As for the campaign interpretations, they could have no more weight than if expressed now. "Nor can the fact that a majority of the voters of the state, as reason for adopting the amendment, are presumed to have accepted the interpretation placed upon it by its advocates, have any force with us in construing its meaning."

Having thus disposed of everybody's judgment except their own, the justices proceed to say: "Without limitation, those words mean that the people of any municipality or county may enact *any* law or constitutional amendment, however obnoxious to the other people of the state or inconsistent with general

[1] Hodges *v.* Dawdy, Brief for Appellees, pp. 23, 32.

[2] Hodges *v.* Ringo, Abstract and Brief for Appellees, p. 5.

[3] Hodges *v.* Dawdy, Brief for Appellees, p. 40.

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laws." This, they said, would destroy the sovereignty of the state, would lead to an absurdity and must, therefore, be rejected. To give the words any rational meaning it would be necessary to insert words never included by the framers of the amendment and also to transpose clauses. For example, the enacting clause, as it stands, applies to the people of the whole state, "which is a clear indication that the reservation of power was to the people of the whole state and not to any particular part or subdivision." The eight-per-cent provision, not being modified by the words "each municipality" and "each county," calls for eight per cent of the voters of the whole state and must apply to all measures. It is evident, then, to the judges, that the words "each municipality" and "each county" were "inaptly thrust into the amendment as originally framed in a way that it expresses nothing and means nothing." All the proposed measures were found to be inconsistent with the general laws of the state and therefore not such as should be submitted "to the voters of the respective localities who have attempted to initiate them." [1]

While this decision was regretted by many, no other was possible, if the judges were to choose between the opinions offered by appellant and plaintiffs. The only other alternative was to blaze out a new trail, or rather follow that opened by some advocates of the amendment when it was pending, and adopted by the legislature in the Enabling Act, which appealed to many as a reasonable interpretation of the amendment. But the judges held that this would require too much judicial amending, though they would simply have been following the legislature. They therefore destroyed utterly the power of legislation by the localities.

The next tangle which the supreme court was called upon to unravel grew out of the enacting clause. The legislature of 1911 passed an act creating the Village Creek and White River Drainage District and preceded it by the words, "Be it enacted by the people of Arkansas." Thereupon some one who was opposed to the measure asked for an injunction against the

[1] Hodges *v.* Dawdy, 149 S. W. 656 *et seq.*

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commissioners appointed under the act on the ground that it was null and void because not preceded by the enacting clause of the constitution of 1874, "Be it enacted by the General Assembly." Now the general appropriation bill had been adorned with this same modern enacting clause, which was now called in question. Consequently, when this case came before the justices, they modestly demurred to rendering an opinion, since they were personally interested in the outcome to the extent of their salaries as provided in the appropriation act. They therefore certified to the governor that they were disqualified. The same appropriation bill originally contained an item to pay the expenses of special justices, but it had been vetoed. But for this, the state might have been in the predicament of not being able to find any judges not personally interested in the decision. The special justices, however, could not claim disqualification and the governor found five men to serve and to depend on the legislature of 1913 for their reward.

In delivering the opinion of a majority of the court, Special Chief Justice Harrod said:

> What was the evil the initiative and referendum amendment was designed to remedy? It is well known that it was the failure of the legislative department of the state government to respond to the wishes of the people. This failure sometimes took one form, sometimes another. Sometimes it was the failure or refusal to enact laws the people wanted; sometimes it was in passing laws the people did not want passed. Now how were these evils to be remedied? By adding to existing legislative power the power of the people to pass laws they wanted and by diminishing the legislative power to the extent of permitting the people to pass upon and approve or reject laws enacted by the General Assembly. The evil to be remedied was not the style of the bills, but the substance of the bills. The people were not especially concerned with the style of [the] enacting clause, but they were profoundly interested in the provisions of the laws.

Amendment No. 10, the opinion continues, was "not intended to interfere with the ordinary powers of legislation." The expression "all bills" in the amendment refers only to bills originated by petition. The original requirement of the constitution for legislative bills is not repealed, but is still in force. To

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the objection that this would mean two enacting clauses, one for the legislature and another for the people, a majority of the justices merely answer: "This is true, but what of it?" The legislature should have used the old formula, but the new was substantially in compliance with the requirements of the constitution. With the opinion expressed in the last clause Mr. Harrod did not concur.

Special Justices Hill and McCollum dissented, holding that all lawmaking in Arkansas had been "revolutionized" and "all of it vested affirmatively or negatively (save alone a limited class of emergency acts) in the people themselves." As long ago as 1871 this court had held that any act not bearing the caption prescribed in the constitution was void. The only caption now prescribed was that given in Amendment No. 10.[1]

Shortly before this decision was announced the first election under the initiative and referendum was held. Reference has already been made to the fact that the Turner-Jacobson tax bill was referred by petition. This went before the people as Act No. 1. The prohibitionists, despairing of getting anything from the legislature, now brought in a statewide measure and asked that it be submitted as Act No. 2. The liquor interests asked for an injunction to prevent the secretary of state from submitting this act on the ground that, while the petition contained the requisite number of signatures, the total was secured by adding those attached to petitions filed on different days, and because the act would set aside local-option laws; but the supreme court refused to grant the injunction.[2] A new election law, promoted by the minority party and designed to secure bi-partisan boards of election commissioners and judges, became known as Act No. 3. Act No. 4 was designed to provide uniform text-books and the furnishing of them free to school children by the state. This act is said to have been promoted by the Socialists, but there has been a growing demand for free text-books and a bill to provide for this was introduced in the legislative session of 1905.

[1] *Arkansas Law Reporter* (Little Rock), xxxii, No. 19, (January 8, 1913), pp. 665–677.

[2] Hammett *v.* Hodges, 149 S. W. 667.

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While the legislature was in session, it submitted two amendments to the constitution. One of these, Amendment No. 11, was a somewhat crudely drawn suffrage provision, the chief feature of which was the so-called grandfather clause. A somewhat similar proposition had passed the House in 1907. The legislature of 1907 had submitted an amendment exempting from taxation for seven years all capital invested in cotton factories within ten years. This had been defeated and was now resubmitted as No. 12. Popular dissatisfaction with legislative conditions, especially with reference to the length and expense of the session and the character of the output, all of which were particularly exasperating in the session of 1911, found expression in Amendment No. 13, submitted by initiative petition in accordance with Amendment No. 10, limiting the sessions to sixty days with pay at the rate of six dollars per day and ten cents mileage and to three dollars per day and mileage for the first fifteen days of any session called by the governor. A petition providing for the recall of all elective officers was submitted as Amendment No. 14. When the carpet-bag government of Reconstruction days was overthrown, a new constitution was adopted forbidding the state, counties and municipalities to lend their credit, and prohibiting counties and municipalities from issuing any interest-bearing evidences of indebtedness except bonds for the payment of debts then existing. In 1908 an amendment allowing municipalities to issue bonds for improvements and for public utilities was voted down. This was resubmitted by petition as Amendment No. 15. The following table presents the results of the election.[1]

	VOTE		MAJORITY	
	FOR	AGAINST	FOR	AGAINST
Act No. 1	57,176	79,899		22,723
Act No. 2	69,390	85,358		15,968
Act No. 3	57,192	72,879		15,687
Act No. 4	64,898	73,701		8,803
Amendment No. 11	51,334	74,950		23,616
Amendment No. 12	66,919	51,469	15,450	
Amendment No. 13	103,246	33,397	69,849	
Amendment No. 14	71,234	57,860	13,374	
Amendment No. 15	76,660	53,098	23,562	

The total vote for governor at this election was 169,610.

[1] Report of Secretary of State, 1909–12, pp. 411, 415.

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The highest vote on any of the measures submitted was 154,748 on state-wide prohibition, which is 91 per cent of the vote for governor. The nearest competitor was the limitation of legislative sessions to sixty days and on this was cast 80 per cent of the vote for governor. Little had been said about free text books, yet the vote on that was also 80 per cent. The lowest vote was 117,988, on exempting cotton mills from taxation, which was only 60 per cent.

Not a single one of the acts had received a majority of the votes cast on it. The suffrage amendment to the constitution also went down in the defeat, but the other four amendments carried a majority. The constitution of 1874 required that amendments should receive a majority of the total vote cast at the election and the highest vote cast for any state officer had always been taken for the standard. The sixty-day limitation on legislative sessions certainly had received a majority of the total vote, but the adoption of even this measure was to be called in question. No other amendment had received a clear majority of the votes cast at the elections, but many contended that the old rule had been altered by Amendment No. 10, and the supreme court was called upon to settle this question. The campaign for the adoption of No. 15, authorizing cities to issue bonds, had been spirited. Its defeat previously was attributed largely to the country vote. An effort was made to show the country voter that it would not affect him and that the development of the cities was hampered by lack of the bond-issuing power. The amendment received a good majority of the votes cast on it and a writ of mandamus was now asked for to compel the election commissioners to canvass the returns and declare the adoption of No. 15. To this the commissioners entered three pleas: (1) that they were without authority to do so, the duty developing upon the speaker of the house; (2) that No. 15 had been improperly submitted, as the constitution allowed only three amendments to be submitted at one time; (3) that No. 15 had not received a majority of the total vote cast.

Mr. Justice Kirby delivered the opinion, speaking for a majority of the court. He held that there were now two ways of amending the constitution, by legislative proposal and by

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popular initiative. Amendment No. 10, providing the latter, gives no intimation of any intention to propose or adopt amendments independent of the constitution. The amendment abrogates only such provisions as are repugnant to it. "No interpretation of the amendment should be allowed, which would conflict with any other provision of the constitution, or which is not absolutely necessary to give effect to the amendment." The constitution of 1874 had limited the number of amendments to three. Amendment No. 10 had altered the method of submission, but not the limitation to three, which is as binding upon the people as upon the legislature. This being true, No. 15 was improperly submitted and could not have been adopted. It was therefore unnecessary to pass upon the question of the majority necessary to adopt.

Justices Wood and Smith dissented in strong and convincing language. They call attention to the fact that the amending clause of the constitution of 1874 was held not to be self-operative and summarize the act of the legislature for carrying it into effect. Amendment No. 10 had specifically provided for further legislation and the legislature of 1911 has passed an enabling act. This provides in detail the method of originating and submitting petitions. The speaker of the house is directed to declare the result. It even provides for the case of two conflicting amendments submitted at the same time, declaring that the one receiving the highest number of votes shall be paramount in all cases where there is a conflict and requiring the governor to make proclamation of which is paramount. The governor is to issue a proclamation declaring adopted any measure approved by a majority of those voting thereon.

A comparison of section 22 of article 19 of the constitution and its enabling act with Amendment No. 10 and its enabling act, they continue, will discover "two radically different and wholly independent plans for the submission and adoption of amendments to the constitution." Unless there is something in No. 10 itself clearly implying that the people, in adopting it, intended to limit themselves to three, then "it is not within the power of the court to supply that language." Not only is no such limitation found in the amendment, but "the people re-

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serve to themselves the power to propose laws and amendments to the constitution" without any limitation whatever. No rule of construction will "warrant the court in segregating the clause, 'but no more than three amendments shall be proposed or submitted at the same time,' from all the other language of section 22 of article 19 of the constitution, where it applies solely to amendments proposed by the legislature and reading that language into No. 10, which applies solely to amendments proposed by the people." To do so would make the people, not "independent of the legislature," but absolutely subservient to it, for, if the legislature should submit three amendments, the people would be precluded from submitting any at all. Else, they must run a race with the legislature and get there first. On the question of the majority necessary to adopt, they merely quote from No. 10: "Any measure referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon."[1]

Amendment No. 12, which was submitted by the legislature, received a majority of the vote cast on it, but not a majority of the total vote. It was not declared adopted and no one was sufficiently interested in it to take the matter into the courts.

Shortly after the legislature of 1913 met, a member of that body asked the chancery court of Pulaski County for a writ of injunction to prevent the speaker of the House of Representatives from declaring, as directed by law, the adoption of Amendment No. 13, limiting legislative sessions to sixty days. The writ was denied and appeal was taken to the supreme court. Attorneys for the appellant argued that the amendment had not been adopted, for two reasons. First, it had not been advertised for six months prior to the election of September, 1911, as the constitution of 1874 directed. Second, the constitution of 1874 allowed only three amendments to be submitted at one time, but five had been submitted. More than three having been submitted, none had been properly submitted and all were void. The attorney general and counsel for the speaker argued that the chancery court had no jurisdiction in the matter.

[1] State *ex rel.* City of Little Rock *v.* Donaghey, 152 S. W. 746–752.

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They also maintained that the time requirement of the constitution of 1874 had been changed by Amendment No. 10, the requirements of which had been complied with. The mistake of the secretary of state in submitting five amendments did not vitiate the first three submitted. The amendment in question was one of these, had received a large majority of the votes cast and had become a part of the organic law.

The supreme court upheld the contention of the attorney general that the chancery court was without jurisdiction. No method had been provided in the constitution for determining the adoption of amendments, but the speaker had been directed by law to make announcement of such changes. His proclamation was not final, but the question "whether an amendment has been properly adopted according to the requirements of the existing constitution is a judicial question. It follows, then, that the plaintiff could suffer no injury by the speaker declaring that the amendment has been adopted, and the court had no jurisdiction to hear and determine the cause." [1]

Having thus decided that there was no case before it the court continues:

> The General Assembly of the state is now in session and the question of the adoption of Amendment No. 13 is one that indirectly, at least, affects the interest of all the people of the state. On this account the attorney general has requested a decision on the case on its merits, and we have concluded to accede to his request in order to prevent the confusion and injurious consequences which might result to the people of the state if we do not determine the question.

The contention that the amendment had not been published six months, as required by section 22, article 19, of the constitution, was disposed of by saying that amendments supersede parts of the original constitution with which they are in conflict, and that to give effect now to section 22, article 19, would render "nugatory that part of Amendment No. 10 which provides that initiative petitions shall be filed with the secretary of state in less than four months before the election at which they

[1] *The Arkansas Gazette*, Feb. 4, 1913, p. 3.

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are to be voted upon." The legislature was clearly given power in Amendment No. 10 to direct how amendments originating by petition should be submitted. The legislature of 1911 had given these directions, requiring publication for six weeks, and the secretary had complied with them. Whether this law or section 22, article 19, would apply to amendments submitted by the legislature was not before the court.

The question whether or not the submission of five amendments by the secretary of state, when the constitution forbade the submission of more than three, had the effect of invalidating all, had in effect been already decided in a previous case. In passing upon the adoption of Amendment 15 the court has held that

> the first three amendments that were proposed, whether by the legislature or by the people, or by both, should be submitted, and that when three amendments were submitted, the power to submit amendments was exhausted until after the next election at which these amendments were to be voted upon. The action of the secretary of state in submitting more than three could not invalidate all of them. . . . To so hold would be to put in the power of the secretary of state, and a small per cent of the people of the state to prevent the submission of any amendments . . . and thus nullify the constitution.

Amendment No. 13 was one of the first three, and therefore was legally submitted.

The contention of appellant that Amendment No. 10, under which Amendment No. 13 originated, is void for uncertainty, because, when considered as a whole, it is not susceptible of a reasonable interpretation, had already been decided adversely. Therefore Amendment No. 13 was legally adopted.[1]

It is interesting to compare this decision with that of Hodges *v.* Dawdy and the four others decided at the same time. In this case the court argues ably that effect must be given to constitutional provisions where it is possible to do so by a reasonable interpretation. In Hodges *v.* Dawdy the same court, consisting of five members, declared a clause in Amendment No. 10 meaningless and therefore void, although 91,367 had

[1] Grant *v.* Hardage, 153 S. W. 826 *et seq.*

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voted their confidence in those who said it was susceptible of a reasonable interpretation while only 39,111 had agreed with those who said it was not.

Having been defeated in the courts, the legislators made one more effort to free themselves from the sixty-day rule. A concurrent resolution was adopted requesting the attorney general to render an opinion on the question whether the legislature must adjourn sixty days from the time it convened or sixty days from the time the amendment was declared adopted by the speaker.[1] This he did by saying that they must get out in sixty days from the time of meeting. At the end of that time they folded their tents and somewhat grudgingly stole away.

Did the people suffer in consequence of the short session, as some of the legislators said that they would? As already noted, the long session of 1911 cost approximately $200,000. The sixty-day session of 1913 cost about $76,000. The saving of $124,000 to an empty treasury is not a matter of little consequence. The shortening of the session also seems to have resulted in "speeding up," for in 60 days, 368 acts, resolutions and memorials, were passed, covering 1560 pages, as against 502 covering 1958 pages in 140 days in 1911. In other respects the results are at least questionable. Of the 115 acts which can in any sense be said to be general, 33 are for appropriations and several are of an administrative character. Seventy-two acts showed dissatisfaction with previous work by amending or repealing certain acts, some of them general, some local. A few bills were passed dealing with important subjects, such as the liquor business, labor, water power, assessments, etc. How carefully most of them were drawn remains to be seen. Two acts were passed relating to the erection of power dams and two to prevent the introduction and spread of insect pests, in the latter case two different boards being created to carry them out. The appropriation bills were rushed through in the closing days of the session and were ruthlessly mutilated by the "battle-axe brigade." But that is the usual method. Since the legislature adjourned, it has been discovered that the general

[1] *Arkansas Gazette*, Feb. 19, 1913, p. 3.

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appropriation bill was not passed by both houses in the same form. There was some talk of an extra session to correct this, but that has subsided and the auditor probably will honor warrants for all sums agreed to by both houses. Within six months the state had four governors. Two of them engaged in a lawsuit to see which should have the office. Six years ago there were three governors in a few weeks, but no lawsuit. To provide against such contingencies in the future, the legislature of 1913 submitted an amendment to the people providing for a lieutenant governor. Some contend that this amendment is far worse jumbled than ever No. 10 was. Indeed, they say that it cannot possibly be made operative. Whether this is due to haste consequent on the shortened session or to some other cause may be a debatable question. Of one thing there is no doubt, that the state is badly in need of expert aid in the drafting of bills, such as is furnished by the legislative reference bureaus already in operation in several states. This probably would relieve the courts somewhat and save interested parties from expensive litigation.

The Enabling Act of 1911 made provision for the ballot title for all measures referred to the people, separating them into three classes as referred by the legislature, by petition, and by initiative petition, and directed that all acts and amendments submitted should, beginning at least three months before the election, be published for thirty days in one newspaper in each county.[1] The fees for such printing were not to exceed one half the fees then allowed for the publication of legal notices. Now the constitution of 1874 directed that amendments should be published for six months, but, although the Enabling Act of 1911 had reference to all measures, the secretary of state separated them and had the two amendments submitted by the legislature published for six months, the others for thirty days, thus seeming to obey neither the constitution nor the law. The publication of the two legislative amendments cost $16,807, something more than it would have cost for only thirty days. The cost for the other measures was approximately $60,000,

[1] Acts of Arkansas, 1911, pp. 251-2.

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making a total of $76,807. Had all the measures been printed in pamphlet form and distributed to the voters of the state, the entire cost, according to the estimate of a reputable printer, would not have exceeded $1200. At the session of 1913 a bill was introduced to provide for this kind of publication. But the secretary of state had exercised freely the power of interpretation. The law had said the measures should be published in one newspaper in each county, but he interpreted this as not forbidding him to publish in more than one and actually had them published in one hundred and sixty-nine papers, although there are only seventy- five counties in the state. The amounts received by these papers ranged all the way from $35 to $805. Now when the act to provide for publication in pamphlet form came up for consideration the newspapers bestirred themselves and, having several representatives in the legislature, easily defeated it.[1]

As soon as the decision against the adoption of the amendment allowing municipalities to issue bonds was announced, the friends of the measure started another petition and soon had it filed with the secretary of state. By reason of that fact, it stands first in the list of amendments to be voted on in September, 1914. The legislature submitted two, one providing for a lieutenant governor and one putting legislators on a salary of $750. Thirteen other resolutions for amendments were introduced, some of which passed one house and some of which were defeated. One provided for woman's suffrage, one for the resubmission of the recall, one for the resubmission of the suffrage amendment, one for giving counties the right to vote on certain local legislation and one giving the people and the legislature each the right to submit three amendments.

Encouraged by their success in defeating state-wide prohibition and frightened by an act of the legislature soon to be mentioned, the liquor interests filed a petition with the secretary of state asking for an amendment providing for local option. But they came too late and are shut out under the rule of three. Whether their petition can lie over and take first place in 1916

[1] *Arkansas Gazette*, February 19, 1913, p. 3.

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may become another question for the courts to decide. The legislative act which frightened them was one forbidding the granting of license in any incorporated town unless a majority of the adult white inhabitants (including women) sign a petition for it. The petition and all signatures must be published. In order to avoid interfering with licenses already issued and to give the liquor people time to adjust themselves to the provisions of the law, its operation was postponed until January 1, 1914, but the emergency clause, minus the word "immediate" was attached. The liquor people at once bestirred themselves and soon presented a referendum petition to the secretary of state. The attorney general, Wm. L. Moore, being asked for his opinion, ruled that the act was not subject to the referendum. The liquor people contended that the legislature had no right to attach the emergency clause to an act and then postpone its operation for nearly a year, and they at once asked the circuit court for a writ of mandamus to compel the secretary of state to submit the statute to a referendum, but the court refused the writ and an appeal was taken to the supreme court. Certain labor interests expressed a fear that the very existence of the referendum was at stake, and the state federation of labor, with the exception of the printers' union, joined the liquor interests in the effort to secure a reversal of the decision.

The two questions considered by the court were: First, is the determination that an emergency exists for putting an act immediately into effect a legislative or a judicial question? Second, if legislative, has the legislature, in this case, properly evidenced its finding that an emergency existed and so expressed its finding as to exclude the act from the referendum? On the first question the court cited the case of Wadderly *v.* City of Portland, where the same question was discussed in respect to the Oregon referendum, and agreed with the Oregon court that it was a matter for the legislature to determine. The intent of the legislature in the case at bar, said the court, is clear. It did not use the old formula, but undertook to use substantially the language of the emergency clause in Amendment No. 10. The omission of the word "immediate" and the postponement of the day for the law to become operative did not affect its validity.

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Having the emergency clause attached, it became a law the moment it was signed by the governor, since this clause of Amendment No. 10 expressly excludes from the operation of the referendum all "laws necessary for the immediate preservation of the public peace, health, or safety." That the provisions of the act were not enforceable until after December 31, 1913, was held to make no difference. Said the court:

> One purpose of Amendment No. 10 was to confer upon the legislature the power to pass laws that were necessary for the immediate preservation of the public peace, health or safety, without reference to the people under the referendum. Immediate, in the sense of this amendment, means those laws that should take effect in order to conserve this purpose before the time when the people under the provisions of the amendment would have the opportunity to vote upon them. In other words, such laws as the legislature deem necessary for the immediate preservation of the public peace, health or safety, they may so find, and declare, and put in force, at any time before the next general election. The framers of Amendment No. 10 and the people who adopted it, did not intend that laws necessary for the immediate preservation of the public peace, health or safety should wait the slow processes of the referendum; hence the amendment provides that the legislature could enact such laws and put them in force before the time required for the people to pass on them under the referendum.
>
> But the amendment does not require that laws which the legislature determine and declare necessary for the immediate preservation of the public peace, health or safety shall be put into effect immediately. In the absence of such requirement a law should not be held unconstitutional because the legislature, acting upon the facts before them, in their judgment and discretion, deemed it wise to postpone the time for the law to take effect until some future date.[1]

The present situation may be summed up as follows. Within three years after the adoption of the initiative and referendum, the supreme court has handed down seven different decisions involving eleven different cases. These decisions have so interpreted Amendment No. 10 that it applies to state-wide measures only. The legislature of 1913 provided by statute for the referendum of ordinances of town councils by petition, but did not

[1] Hanson *v.* Hodges, *Arkansas Gazette*, October 14, 1913.

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provide for the initiation of such measures in the same way. The same session re-submitted one of its own local laws to the voters of Hot Springs County. An indefinite number of acts may be submitted at one time, whether referred by the legislature, by petition, or by the initiative, but only three amendments to the constitution, whether originated by the legislature or by the initiative or by both. The legislature may prevent the reference of its acts through petition by simply adding the emergency clause, and this may be done even though the operation of the acts be postponed for a year or more from the time of enactment. The last legislature manifested a strong tendency to prevent reference, though it is hard to discover any fixed principle in the use of the emergency clause. For example, it was attached to acts requiring railroads to screen their cars, enlarging the powers of the board of health, regulating the practice of trained nurses, the blue-sky law, acts requiring employers to provide seats for female employees, to prevent corrupt practices, and to provide a bureau of labor. It was not attached to statutes regulating campaign expenses, regulating water-power rights, acts to prevent fraud in bulk-sales, and to provide for the taxation of certain public utility corporations. Two important questions raised by the recent litigation have not been settled, namely, whether the method of advertising measures prescribed in the Enabling Act applies to amendments submitted by the legislature as well as to those originated by petition, and whether an amendment, to be adopted, must receive a majority of the total vote or only a majority of the vote cast on it.

But the initiative and referendum is in active operation. As already indicated, a constitutional amendment originated by petition is now pending. The legislature shows some disposition to refer local measures of its own. Initiative petitions are now being circulated, one of them to provide a child-labor law which the last legislature refused to enact.

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RECENT DEVELOPMENTS OF PROPORTIONAL REPRESENTATION

IF a political student compares 1913 with 1813, perhaps the most striking change that he observes is the growth of parliaments. In one form or another representative institutions are now to be found in every country where men wear clothes, except among Esquimaux. Russia, India, Japan, China, Egypt, Persia, Turkey—there is nowhere a despotism so firmly rooted that it has been strong enough to deny elected representatives of the governed at least some small partnership, or share of partnership, in the business of government.

So far, in spite of this growth of parliaments, practical statesmen and ordinary citizens have given small attention to the methods by which representation is accorded. The great thing has been to get representation; the machinery has seemed less important. But there are now everywhere signs of a change. Experience has begotten disillusion. Representative assemblies do not truly represent. Minorities are often ignored. Majorities are often distorted and sometimes again turned into minorities. Large numbers of citizens have no representation, unless it be representation to have for one's mouthpiece a person diametrically opposed to the elector. Men of light and leading are not welcome unless they swear adherence to a party and satisfy the demand of the party manager for a "safe" candidate.

The civilized world, for the most part unconsciously, repeats Walt Whitman's complaint of the shortcomings of "elected persons"; some men turn aside from parliamentary institutions in disgust, looking to syndicalism and other vain imaginings; others, convinced that self-government must be representative government, search in a more patient spirit for a remedy.

In the history of physical science it is a commonplace that the great inventions occur almost simultaneously to many men. The human race is like a great army advancing on a broad front: it meets and it must surmount a series of far-stretched barriers. At almost the same time these barriers are broken

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at many points: there is an honorable rivalry to be first on the ramparts. It is the same in political and social science. The same problems confront the nations. The same solutions occur to many minds and receive the welcome appropriate to the state of the surrounding society.

It is thus only to be expected that the movement for a better system of representation—if it be a real movement springing from real needs—should be world-wide. And so in fact it is. The purpose of this paper is to record briefly recent developments in some of the chief European countries. Some future writer may be in a position to deal with a similar movement in American federal politics.

In the United Kingdom the history of the movement for proportional representation goes back to Thomas Hare's book on *Representation* (published in 1859, and warmly applauded by John Stuart Mill) and even earlier. In an imperfect form the British parliamentary constitution had recognized "minority representation" before 1885 in certain selected constituencies where three members were returned. In these constituencies electors were allowed only two votes, not more than one of which could be given to one candidate. Further, school boards, until their abolition in England in 1902, were, and in Scotland still are, so elected as to give imperfect representation to minorities by the not very satisfactory machinery of the cumulative vote. In 1885, when the vote was given to the agricultural laborer, the British electoral system was recast and single-member constituencies became the rule. The three-member constituencies were abolished, and with these died the imperfect recognition of the proportional principle in parliamentary election. In 1905 the Proportional Representation Society, mainly by the efforts of the Rt. Hon. Leonard (now Lord) Courtney and the late Lord Avebury, was revived and a steady movement set on foot. This movement resulted in the appointment in December, 1908, of a Royal Commission on Electoral Systems. The commission reported in 1910 that proportional representation was practicable, and that for second chambers and municipal bodies the principle was sound, but the majority of the commission were not prepared to propose its adoption "here and now" for the British House of Commons.

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But what, in 1910, the Royal Commission did not recommend there and then for the British House of Commons, that House itself, when it came to discuss the machinery of the Home Rule Bill, adopted not only for the Irish Senate but also for certain constituencies of the new Irish House of Commons. The clause applying proportional representation to the Irish Senate was carried unanimously on October 31, 1912, and that relating to the Irish House of Commons, by 311 votes to 81, on January 7, 1913. It may be well to set out these two clauses in full. That relating to the Irish Senate reads:

> The election of senators shall be according to the principle of proportional representation, the electors being the same electors as the electors of members returned by constituencies in Ireland to serve in the Parliament of the United Kingdom, and each elector having one transferable vote.[1]

The four provinces will return: Ulster, fourteen senators; Leinster, eleven; Munster, nine; and Connaught, six. The clause relating to the Irish House of Commons reads:

> In any constituency which returns three or four members, the election shall be held on the principle of proportional representation, and each elector shall have one transferable vote.[2]

This will apply to the following constituencies: Belfast East, five members; Belfast North and Cork City, four members each; Belfast South, Dublin City (College Green), Dublin City (Harbour), Dublin City (St. Patrick's), Dublin County (North) and Dublin County (South), three members each. Thus 31 out of 164 members of the Irish House of Commons will be returned (if the present Home Rule Bill becomes law) on the proportional principle, but the constituencies affected are almost entirely urban or suburban in character. It may be anticipated that one result will be to secure one or two seats to an Irish Labor Party.

[1] Clause 8 (2) of the Government of Ireland Bill.
[2] *Ibid*, clause 9 (2).

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The adoption of the proportional principle in Ireland has been largely due to the influence of the Irish Proportional Representation Society, a child of the British Society, headed by Sir Horace Plunkett. It is the fruit of the desire for the reconciliation of old feuds and for the admission of all Irishmen—whether they have the support of a local majority or not—on a policy of equality to the councils of a nation regenerate. It was also important to avoid the appearance of an Ireland divided geographically into a solid Protestant North and a solid Catholic rest of Ireland. The fallacy of the "Solid South" is not to be imitated. To this result the Belgian experience contributed principally. In Belgium, under the old majority régime, the division between the Flemish and Walloon provinces was made to appear far more serious than it was in reality, because the Flemish provinces returned almost exclusively Catholics and the Walloon provinces almost exclusively Socialists or Liberals. The introduction of proportional representation made apparent to the popular eye the fact that there were large Liberal and Socialist minorities in Flanders and large Catholic minorities in Liége, and so the Flemish Catholic ceased to think of the Walloons as being nothing but the enemies of his faith, and the Walloon realized that progress, as he understood it, was not without witness in Flanders.

The Irish victory is the most striking gain hitherto made by proportional representation in the British Islands. So far the principle has not been adopted for municipal purposes, in spite of the favorable report of the Royal Commission, chiefly because the British Parliament is so fully occupied that there has been no time to spare for the necessary legislation, and the House of Commons has contented itself with a platonic resolution passed unanimously on March 30, 1910, to the effect that

> Inasmuch as the present systems of electing representatives, whether to Parliament or municipal bodies, result in grave anomalies and injustices, it is expedient to test the system of proportional election, and for that purpose to empower municipal boroughs to apply that system in the election of their councils.

But when the promised reform of the House of Lords is at last taken in hand it can hardly be doubted that an elective

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body will be substituted for a hereditary assembly, and that the elective process will be conducted, whoever may be the electors, on proportional principles. Meantime, it is significant that the new statutory committees which have been set up in the English counties and county boroughs for the purpose of the Insurance Act are elected by a proportional system.

Up to the present time the movement for proportional representation in Great Britain has not become a party question. It has drawn support from all political parties, but it has perhaps made its strongest appeal among those who are most keenly alive to the necessity of carrying the national sentiment with any proposed political change and who are able to detach themselves from the point of view of the "machine." It finds, on the other hand, as a rule, its strongest opponents among those men of all parties who conceive that stable parliamentary majorities could not be secured under the new system, and that the adoption of proportional representation would involve the destruction of the English party system and the substitution of government by groups. In the ranks of the Labor party proportional representation has many strong supporters (the names of Mr. Philip Snowden M. P., Mr. W. C. Anderson and Mr. G. H. Roberts, M. P., may be mentioned specially), but curiously enough the most determined adversary of the principle is the Labor leader, Mr. Ramsay MacDonald. It is his personal influence which has hitherto prevented the British Labor party from following the example of the French and German Socialists and making proportional representation a plank of the Labor platform. Possibly in the future, as the case for proportional representation gets better understood, Mr. MacDonald may find himself on this question as much out of touch with the prevalent Labor movement as Mr. Asquith is out of touch with the prevalent Liberal sentiment on woman suffrage; and thus on both of his opponents John Stuart Mill, the advocate of woman suffrage and of proportional representation, will have a posthumous revenge. The origin of Mr. MacDonald's objections is to be found in the fact that as a disciple of Mr. Sidney Webb he has learned to distrust a doctrine that seems to have, in Mill's philosophy, an individualist ancestry. Mr. MacDonald is anxious

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that Parliament should be an expression of the "national will" rather than a mirror of the national mind: a theory which if pressed to its logical conclusion seems to involve the total suppression of all representation which is not that of the national majority.

In the British movement the experience of the British colonies has been of great value. The system of the single transferable vote has now been in force over the whole of Tasmania since 1907 (it was introduced partially in 1896, and dropped for a time in 1901) and has stood the test of three general elections. Whether so small a parliament (the Tasmanian House of Representatives has 30 members only), in a country where there are two parties only and these almost equal in strength, is an ideal field for proportional representation may fairly be open to discussion, but there is no doubt that Tasmania has proved conclusively that for a white community enjoying the fullest adult suffrage for men and women there are no practical difficulties in the application of the system of the single transferable vote. Tasmanian example has inspired similar movements in the other Australian colonies. In the year just passed (1913), the New Zealand government proposed the introduction of the system for the New Zealand Senate. Their bill was, however, defeated for causes not connected with proportional representation. In South Africa the system is fixed in the constitution (the South Africa Act 1909) in its application to the Senate of the South African Union, and it was in force with very successful results for the municipalities of Pretoria and Johannesburg from June 1909 to 1912.

To pass from the British to the other European movements, it should be observed in the first place that the various systems of proportional representation in use on the continent of Europe differ greatly from the British system of proportional representation, that of the single transferable vote. The continental systems, though they again differ in not unimportant respects among themselves, are all forms of "list" systems. They all involve the arrangement of candidates on a party list in such a way that the chances of election for any person on a list are improved by the votes given to the list as a whole or to any

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name upon it. The British system does not involve the formal recognition of any party, though the results it produces as between the different parties are, as a rule, the same as those which follow from a list system.

The European countries where proportional representation has been adopted are Belgium, Switzerland (for about half the cantons), Sweden, Finland and Würtemberg. In France a strong movement for proportional representation seems to be within sight of success; while in the German Empire as a whole, though a similar movement has the support of the advanced parties, there seems at present small prospect of legislative action.

The French movement has a shorter history than the British but it has advanced further. The accidents of French internal and external politics may delay for some time yet the complete victory of the proportionalists, as they have hitherto delayed the enactment of an income tax, but the principle of "*la R. P.*" has been accepted by the vast majority of the French nation and its realization is merely a question of time and opportunity. Ever since the foundation of the Third Republic, France has been groping for a satisfactory electoral system. Gambetta secured the abolition of the single member constituency (*scrutin d'arrondissement*) and the institution of the constituency returning several members by an electoral system (*scrutin de liste*) on which the party of the majority secured all the seats. In the struggle with Boulangism the *scrutin d'arrondissement* was restored and the *scrutin de liste* was abolished, not so much on account of the glaring injustice of the list system as because it allowed an ambitious pretender on a bye-election to stand for a whole department and thus made possible such an electoral earthquake as General Boulanger's election for Paris. But the single-member constituency has few defenders outside the Radical party, once dominant in France but now sadly disorganized. It is indeed plainly inappropriate in a country which has at least three divergent tendencies in politics—the reactionary, the "Radical" and the Socialist. It has no solution to the problem how to do justice to three parties approximately equal in number—red, black, white—each with a candidate, in a con-

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stituency returning one member. Whether the member elected be red, black or white, some two-thirds of the electors are not represented. And this is true, whether the British and American system be adopted, by which the candidate with the largest single poll is returned, or whether the continental device of the second ballot (or its simpler equivalent "the alternative vote") be used, and the weakest of the three parties be driven to an immoral compromise of its independence of action and forced to favor one or other of its opponents—for a price. Moreover, the *scrutin d'arrondissement* was in many quarters held responsible for the prominence sometimes given in French elections to purely local matters and interests—for the "*esprit de clocher*." And in 1901, when the French *Ligue pour la Représentation Proportionnelle* was founded, just over the frontiers were French-speaking populations in Belgium and Switzerland which had adopted a successful reform. By 1906, over 200 members of the Chamber of Deputies were pledged to the support of proportional representation. In the spring and summer of 1909 a successful popular campaign was carried through, and in October of that year the Chamber voted by a majority of 46 for the introduction of proportional representation into an Electoral Reform Bill, and only modified the vote when M. Briand's government threatened resignation. The general election of 1910 resulted in the return of a strong proportionalist majority, and at the present time the position is that a bill establishing proportional representation (though with some concessions to the partisans of the majority system) has passed the Chamber, been mutilated by the Senate and again restored in the Chamber.

The French position has in it always this element of weakness, that the most convinced supporters of "*la R. P.*" come from the Right, Left Center, and extreme Left of the Chamber, and that it is resisted by the old guard of Radicals who have been the backbone of the parliamentary support of recent French governments. Hence a French Radical government is faced on this question with the awkward dilemma of either quarreling with influential supporters or risking defeat at the hands of the Chamber as a whole, and perhaps it is not sorry to shift the

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odium of the rejection of "*la R. P.*" on to the Senate. Meantime, it is not always easy for the French Socialists and reactionaries to coöperate, especially when a question is to the front on which they are sharply divided, such as the Three Years' Law. On the other hand, Mr. MacDonald's opposition has no counterpart among French Socialists. The most prominent personal influence against proportional representation is not a Socialist but the indefatigable Radical, M. Clemenceau; one of the most influential advocates of "*R. P.*" is the Socialist leader M. Jean Jaurès. "Celui-ci tuera celui-là. Voilà la formule du scrutin d'arrondissement. Ceux-ci tueront ceux-là. Voilà la formule de scrutin de liste sans la représentation proportionnelle. Ceux-ci et ceux-là auront leur juste part. Voilà la formule du scrutin de liste avec la représentation proportionnelle." Such is M. Jaurès' summary of the three competing systems.

In Germany the position is curiously different from that in France. In France the system is not actually in force in any place, whether for municipal purposes or otherwise, but the prospects of its adoption for national purposes are promising. In Germany, on the other hand, the system is in force both for the local diet and for municipalities in Würtemberg, and for municipalities in Bavaria, Baden, Oldenburg and Hamburg, but there is no great probability of its adoption in the near future for elections to the Reichstag, even though in the early part of 1913 a resolution in favor of the reform was lost by one vote only in the Reichstag. The reason for this lies on the surface of German politics. The demand for proportional representation in Germany is exclusively a demand of the more advanced parties, and especially of the Radicals and Socialists. Conservatives of all shades, whether belonging to the Center or Catholic party—whose chief strongholds are Bavaria and the line of the Rhine—or to the Agrarian party of Prussia, obtain from the present distribution of seats and electoral system a representation greatly in excess of their numerical due. Hence in Germany there is no political persuasiveness in the argument that proportional representation may be regarded as a sort of tempering of the cold wind of extreme democracy, an argument which though fallacious (for "in a really equal democracy any

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and every section would be represented not disproportionately but proportionately") has in some places carried weight.

The German government can never have Socialist support and thus cannot get a majority in the Reichstag without Conservative support in some form or other. Hence, under prevailing conditions, the government can hardly be expected to introduce a bill embodying proportional representation applied all over the Empire; and a non-governmental measure, even though it might get a majority in the Reichstag, would have no chance in the Federal Council. It is perhaps just possible that the government might attempt to meet the crying need for redistribution of seats and the scandal of the under-representation of the towns, by giving the great cities more members and providing for the election of those members by proportional representation. Such a measure would have from the point of view of the government the advantage of favoring the Conservatives in urban areas and leaving them undisturbed in their rural strongholds. Whether it would pass the Reichstag is another question. But more probable fields for the extension of the principle are the parliamentary elections in Baden, where there seems to be a consensus of opinion in all parties in favor of the reform, and in Bavaria, where, as the Catholic Centre is maintained in power solely by the present electoral geography, all the parties of the Left and Left Centre call for proportional representation. Furthermore, the influence of the Swiss example is stronger in South Germany than in the North.

Indeed Switzerland is the birthplace of the modern continental movement. In 1890 proportional representation on a list system was introduced successfully into the canton of Ticino, then in a state of disturbance almost amounting to revolution; Geneva in 1892 followed the example of Ticino; and since that date the principle has progressed steadily from canton to canton until at the present time it is the rule in more than half of the component parts of the Swiss Republic. In 1900 it was proposed to extend the principle to federal elections; on a referendum 169,000 voters supported, and 244,000 opposed. In 1910 on another referendum 240,000 supported and 265,000 opposed. Another referendum is to be taken in 1914. The

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ultimate conquest of all Switzerland is hardly in doubt. The country which has advanced further than any other in democratic self-government, and which has now for many years used both initiative and referendum, is not likely to be content with a merely partial adoption of a truly democratic and scientific system of representation.

The Swiss example was infectious rather than contagious. The first country to follow suit was Belgium, which in 1900 extended the proportional system from the larger municipalities (where it had been applied in 1894) to parliamentary elections. The extension was the accompaniment of the introduction of a modified system of universal suffrage, by which, though practically every male citizen has one vote, a large number of citizens of the wealthier classes have two or three votes apiece. The question of electoral reform in Belgium at the present day is the abolition or modification of this system of plural voting. The proportional method of ascertaining the result of an election, whatever be the basis on which votes are conferred, is now established beyond controversy.

The smaller countries have a great advantage over the larger. A small group of reformers can accomplish more when the *vis inertiae* of a great community of scores of million people has not to be overcome. Thus it is that the progress of proportional representation has been swifter in the German Swiss cantons than in Germany, swifter in Belgium than in France, and that the other main successes that have been won in Europe are the conquests of the (comparatively) small communities of Sweden and Finland. In Sweden the proportional representation law was passed in 1907, but in accordance with the constitution it did not come into force until it had received, in 1909, the approval of a new parliament. The application of the proportional system appears to be universal: it governs elections to both houses of Parliament, to parliamentary committees, to town councils, to provincial councils. The first parliamentary elections to the popular house were held in 1911. The system is a list system, but it differs from the other systems in force in Europe both in the freedom with which it permits the combined action of allied parties and in other not unim-

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portant respects. The Socialists were the first party in Sweden to advocate the proportional system, but it was finally carried into law by a Conservative or "Moderate" government. The Finland system (adopted in 1906) is of the "list" type, but it differs both from ordinary Continental methods and from the Swedish system; and though what it asks of the voter is simple enough, the procedure imposed on the returning officer is highly complex. It has, however, worked without any hitch in practice, and has the support of a unanimous public opinion. But the political circumstances of Finland are so abnormal that it would be useless to draw inferences of general application.

One or two words in conclusion. Representative government is now the accepted political system. Whatever limits be set to the powers of the state or the liberties of the individual, government in civilized countries is carried on by and through the representation of the citizen. Hence it is vital to political health to construct a representative system by which, so far as may be, every citizen may be in real touch with the government. Systems which ignore minorities or misrepresent majorities fail in this vital point. The evil of non-representation is aggravated in countries where more than two political parties exist. On a system of single-member constituencies a large national party, amounting to as much as one-third of the electorate, if distributed evenly throughout the country may go without representation. A young party may have to spend years in the wilderness without a parliamentary representative. Such a condition is a danger to parliamentary institutions. The excluded will seek forcible remedies for social ills outside parliamentary action. It is imperative for the English-speaking peoples so to remodel their representative institutions that congresses and parliaments may be set in vital union with their citizens and that the National Will may be carried into effect after the due expression in the common council of every phase and tenet of the National Mind.

J. FISCHER WILLIAMS.

LONDON, ENGLAND.

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REVIEWS.

A Treatise on the Law of Public Utilities Operating in Cities and Towns. By OSCAR L. POND. Indianapolis, The Bobbs-Merrill Company, 1913.—liv, 954 pp.

In spite of the fact that within the last few years there has appeared a fifth edition of Dillon's standard work on the law of municipal corporations and an entirely new compendious treatise on the same subject by Judge McQuillin, Dr. Pond's volume dealing with a single phase of this subject—the law of municipal utilities—is by no means untimely or unacceptable. This is true not only on the ground of convenience to the lawyer and the student of public affairs, but also more especially because Dr. Pond has treated his subject from a somewhat different point of view and has followed a somewhat different method of presentation. The topical scope of this work is exceedingly comprehensive. It deals not only with those questions of law that apply solely to public utilities, such, for example, as the law of franchises, or of rate-making, but also with the broader questions of the law of municipal corporations in their specific application to utilities, such, for example, as the law governing implied powers, municipal liabilities, tax-exemptions, or the power to alienate property. In general arrangement and sequence of the topics under discussion, admirable discretion has been exercised.

Not the least commendable feature of the work is the absence of the usual innumerable footnotes containing copious citations of cases which are supposed at least to lend some color of support to the doctrines and statements set forth in the text. Few lawyers or students will fail to welcome a book that does not beguile them with a prodigal display of inapt, misconstrued and, not infrequently, wholly misleading citations. Dr. Pond has wisely eschewed this particular mark of erudition. Most of the cases cited are directly discussed in the text, and the plan is very generally followed of presenting a quotation from the opinion expressed by the court. In this connection, however, the criticism may be made that in many instances the point at issue in a particular case is not stated by the author, with the result that the reader is left to discover for himself whether the part of the opinion quoted is or is not pertinent to the decision of the case under review. Every student of the law knows how comparatively easy it is to bolster up this or that

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legal doctrine with expressions of judicial opinion isolated from their context. With the facts of a specific case before them, unguarded expressions of opinion by the courts are as natural as they are common. Dicta are far more common than they are either natural or excusable. In any case the prolixity of the courts is a fairly characteristic attribute. Hence the careful student will accept with caution—not to say suspicion—the doctrine laid down in any judicial utterance that is unaccompanied by such facts as are necessary to show its relatedness to the question before the court.

In certain instances it seems doubtful whether Dr. Pond is entirely accurate in his statement of the legal proposition that he presents for consideration, or whether he is justified in the conclusions that he draws from the cases reviewed. Thus in the chapter devoted to the discussion of what is a "municipal purpose" within the meaning of state constitutions the impression is given (sections 18 and 19) that this is a general question of law common to all state constitutions. In point of fact the number of constitutions that contain the phrase "municipal purpose," or its equivalent, is relatively small; and of the cases offered to show the interpretation put upon this phrase by the courts, only those from New York and Oklahoma and one of those from Florida are in point. One of the cases from Massachusetts (187 Mass. 283) did not discuss the proposition of law under consideration at all. The portion of the opinion quoted from the Maryland case referred to (92 Md. 741) does not bear upon the subject in hand, and in addition was merely dictum. The second Florida case cited (36 Fla. 229) concerned only the construction of a specific charter provision. The other cases relied upon to disclose the opinion of the courts upon the proposition of law under advisement (from the Massachusetts, Ohio, and Vermont courts) did not turn upon the question of what is or is not a "*municipal* purpose," for the very obvious reason that the constitutions of these states contained no such phrase to be construed. These latter cases considered the broader question of what is a "*public* purpose." The doctrine that taxes cannot be levied for a private purpose, whatever may be its constitutional basis, may perhaps now be regarded as a general and universally applicable doctrine of our constitutional law. But "public purpose" and "municipal purpose" are not interchangeable expressions; for although a purpose that is municipal must doubtless of necessity be public, every purpose that is public is not necessarily municipal in the strict sense of the latter term. This difference Dr. Pond tacitly recognizes by introducing a discussion of the principle of the public purpose at another point in his treatise

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(sections 55–64). On the whole, therefore, it would seem that the author is scarcely as clear in his presentation and discussion of this interesting legal proposition as he might have been.

Dr. Pond opens his discussion of the implied powers of municipal corporations with this declaration of conclusions:

> The principle of the implied powers of municipal corporations to provide themselves with municipal public utilities is generally recognized by our courts. . . . Decisions giving the most complete freedom of activity to municipalities, consistent with their best interests and not derogatory of specific statutory regulations, represent the great weight of authority. It is only a few of our courts that refuse the right of municipal corporations to keep abreast of the times and to conduct their affairs to the best advantage and for the greatest benefit of their citizens.

It is true that the trend of modern decisions in many jurisdictions is away from the strict and inflexible rule of construction applied to the grant of municipal powers in earlier days, but it is open to question whether the author's expression of opinion is not far too liberal in its view of the modern attitude assumed by the courts. In a list of some twenty-odd cases presented for consideration in this connection, only three clearly sustain the doctrine that a municipal corporation may establish a public utility without express grant of authority. One of these is from the Wisconsin court (section 41), and two are Georgia cases. In one of the latter, the somewhat questionable proposition is supported that a municipal corporation may under its general police power engage in the business of manufacturing and selling ice, although it is manifest that such a business involves none of the public elements that commonly pertain to a municipal utility, such, for example, as the exercise of the power of eminent domain, the right to make peculiar uses of the highways, and the tendency toward monopoly. Liberal expressions of opinion are quoted by the author from a number of cases (sections 38, 40, and 41) without any sufficient statement of the direct points at issue before the courts; but examination of the cases discloses that these expressions are in every instance dicta, since in every one of them the court found no difficulty in showing that the power in dispute had been expressly granted to the city. The New York cases cited (section 43) are wholly irrelevant for the reason that the power in question (the authority to construct a subway) had been expressly conferred by the legislature. The North Carolina case quoted (section 44) turned upon the question of whether a specific appropriation was a "necessary expense" within the meaning of that term as used in a

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clause of the constitution restricting municipal expenditures. In this case the power to construct the waterworks and electric-light plant had been specifically granted by the legislature. The other affirmative cases referred to by the author go no further than to assert that where a city is expressly empowered in general terms to provide a particular utility for *public* purposes, such as "to light the streets, alleys, and other public places," to maintain "gas or other works for light and heat," or "to provide the city with water by waterworks," that city may, as an incident to such power, furnish commercial light or water to its inhabitants. Moreover, Dr. Pond concedes that even this limited implication is flatly repudiated in Massachusetts, Illinois, and New Jersey, while opinions unfriendly to such construction have been expressed in South Carolina and Nebraska. It seems highly questionable, therefore, whether the conclusion is justified that "the principle of the implied powers of municipal corporations to provide themselves with municipal public utilities is generally recognized by our courts," or even whether it may be said that under the express power to provide this or that public utility the implied power to engage in its commercial aspects "is well established by the great weight of authority" (section 49).

In spite of these occasional instances in which the author's general propositions or conclusions may be questioned, his work as a whole is a highly meritorious contribution to the literature of a most important and interesting branch of the law.

HOWARD L. MCBAIN.

COLUMBIA UNIVERSITY.

The Governments of Europe. By FREDERICK AUSTIN OGG. New York, The Macmillan Company, 1913.—xiv, 668 pp.

This excellent book fills an obvious gap in the literature of political science. Burgess, in his *Political Science and Constitutional Law*, and Lowell, in his *Governments and Parties in Continental Europe*, have given us noteworthy studies in comparative government, but their aims have been frankly one-sided, the former taking the juristic view-point of constitutional law, the latter emphasizing party politics. Woodrow Wilson's *The State* in addition to containing much extraneous material for the student of comparative government, is now sadly antiquated. Valuable studies exist of the governmental systems of separate states, for example, Lowell's *The Government of England*, Howard's *The German Empire*, and Bodley's *France*. No previous volume,

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however, has combined a comprehensive survey of the governmental systems of all these states and in addition assembled from many scattered sources the material for a treatment of the minor states of Europe. For this service the author deserves the thanks of every student of political science.

About 30 per cent of the volume is devoted to England; 15 per cent, to Germany; 9, to France; 8, to Italy; 6, to Switzerland; 11, to Austria Hungary; 5, to Holland and Belgium; 8, to Denmark, Norway and Sweden; and 8 to Spain and Portugal. Russia, Turkey, Greece, and the Balkan states are not included. The method of treatment is not comparative, each state being considered separately, although the arrangement of topics enables the student to compare readily the institutions of the different states. The discussion of the government of each state is preceded by an outline of its historical development, in the case of England at considerable length and from Anglo-Saxon times, in the cases of the other states more briefly and in the main during the past century only. The executive, legislative, and judicial departments of each state are considered in order; political parties and the actual operation of the governmental systems are adequately treated; and local governments are briefly referred to. Under England, considerable attention is given to the electorate, the organization, functions, and procedure of parliament, and to the history of political parties; under Germany, the government of Prussia is also included; under Italy the relations of state and church are especially considered; and under Switzerland, the relations of the cantons to the federation. Recent developments and present conditions and tendencies are particularly emphasized, for example, the Parliament Act of 1911 in England, the movements for electoral reform in Prussia and Belgium, the Portuguese revolution of 1910, and the programs of the socialist party in the various European states.

In a book so wide in scope it is easy to point out defects. Aside from misstatements of facts, from which this book is unusually free, individual judgments may differ concerning the selection of topics, the proportionate space allotted to each, and the method of treatment. To the reviewer, the consideration of local government seems too brief. For instance, under England, the discussion of local government, its relation to central government, and the organization of counties, rural and urban boroughs and the city of London occupies but ten pages. Equal space is given to changes in the power of the House of Lords since 1909. The local government of France is disposed of in five pages, and that of some states in single paragraphs. The entire omis-

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sion of any reference to foreign relations, to colonies and to colonial governments leaves a serious gap in the knowledge of one who desires to be familiar with the political systems of European states. The discussion of administration and the work of the various departments is inadequate, as is also the distinction between the ministry and the cabinet in England (page 61); while the same details are sometimes unnecessarily repeated in dealing with various phases of the government of the same state. In the heading of Chapter II, Section 1 (page 34), 1789 should obviously be 1689. The statement that English parliaments never last through the maximum period (page 94), though literally accurate, is somewhat misleading in the absence of further explanation.

These are, however, but minor defects in a most valuable book, containing a mass of information and written in a clear and attractive style. The author, in the main, limits himself to statements of facts and avoids judgments or generalizations concerning devices of government or methods of operation. He points out, nevertheless, the weakness of the parliamentary system in France, criticizes the electoral systems of several continental states, considers the present arrangement between church and state in Italy "subversive of the best interests of the Italian people" (page 390), and is sceptical of the stability of the Portuguese republic (page 643). Extensive bibliographical material is appended in the form of footnotes, numerous books and articles being referred to topically in connection with the discussion of the most important subdivisions under each state. There is no general bibliographical list; and in the index the topics are arranged under the heading of their states instead of alphabetically. Such a book should do much to stimulate the rapidly increasing interest in political studies in American colleges and universities, as well as prove valuable to those who, as good citizens, are interested in governmental problems as they have been worked out in the leading states of the world.

RAYMOND GARFIELD GETTELL.

TRINITY COLLEGE, HARTFORD, CONN.

The Making of the Australian Commonwealth. By BERNHARD RINGROSE WISE. New York, Longmans, Green and Company, 1913.—xiii, 365 pp.

The same sentiment which causes Englishmen to survey with pride the many constitutions fashioned in imitation of theirs should make Americans view with almost paternal interest experiments in federal

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government; for federation as a practicable form of political organization is our contribution to political science. No other people who are not subject to the British crown ought to take as great interest as ourselves in the creation of the Commonwealth of Australia whose makers had ever before them the precedent of the United States. The story of this event is related in a straightforward manner by Mr. Wise of New South Wales, himself a member of the convention which drafted the constitution of Australia, and a man who played a more important part in the events which he narrates than his occasional modest references to himself—always in the third person—would lead the reader to infer. His book is "the record by an eye-witness of the making of the Commonwealth during the critical period from 1889 to 1900, which aims at giving to a later generation a more vivid picture of that time, and making intelligible the policy and passions of the contending parties, the personalities of the rival leaders, and the ebb and flow of popular sentiment which was the decisive factor in the great event." The author expressly disclaims for his work the character of a *histoire documentée*, and one does not find in it any exhaustive account of parliamentary or convention debates.

The credit for arousing sentiment for federation is given to Sir Henry Parkes, premier of New South Wales. The narrative opens with the speech delivered by Parkes at Tenterfield in October, 1889, which marked a new era in Australian politics. Federal union, which had been vaguely talked of for a whole generation, became an immediate issue. The story, as told by Mr. Wise, hinges mainly upon the movement for federation in New South Wales, the largest of the colonies and the one in which the struggle was hardest and closest. Brief appendices discuss the movement in Victoria and Tasmania where federation was finally carried by overwhelming majorities. The author shows how the federal movement was complicated with other political questions, especially the tariff, imperialism and local self-government. The free-traders, particularly in New South Wales, were afraid that federation would result in the adoption of protection for all Australia, the imperialists, that it would prove to be the first step in separation from the mother country, while republican sentiment was apprehensive of a loss of local autonomy. Considerable attention is, of course, paid to the conventions of 1891 and 1897. The failure of the draft constitution adopted by the former, whose members were chosen by the provincial legislatures, is ascribed to the lack of popular interest in federation at that time. By 1897, however, public opinion had become more favorable and the convention of that year, whose delegates had been

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chosen directly by the people, had much more popular support back of it than its predecessor. The constitution which it drafted was finally adopted in referendum by the voters in the several colonies and enacted by the imperial Parliament in 1900 as the Commonwealth of Australia Act.

In a circular letter sent by Sir Henry Parkes to the other Australian premiers in October, 1889, proposing a national Australian convention to draft a federal constitution, he wrote: "In the work of the convention, no doubt, the rich stores of political knowledge which were collected by the framers of the Constitution of the United States would be largely resorted to." The two great federations which the framers of the Australian constitution had to guide them were Canada and the United States. Mr. Wise's narrative shows that several of them had large knowledge of the constitutional law of the United States, and in several respects, preferred it to that of Canada—notably in regard to the reserved powers of the states, and the position of the Senate.

R. L. SCHUYLER.

Public Opinion and Popular Government. By A. LAWRENCE LOWELL. New York, Longmans, Green, and Company, 1913.—xiv, 415 pp.

The problem considered here of translating public opinion into political action, though it touches the very existence of democracy, has too often been ignored or only half understood. The nature of public opinion itself has rarely been the subject of serious examination. "One of the chief difficulties in America," says President Lowell, "lies, not so much in bringing public opinion to bear in cases where it can and does exist, as in the failure to perceive its intrinsic limitations. We need to learn on what subjects a real public opinion can be formed, how far it can extend to particular measures, and how far it is of necessity confined to general principles." Though *Vox Populi* may be *Vox Dei*, as Sir Henry Maine remarked, there has never been any agreement as to the meaning of *Vox* or the meaning of *Populus*. It is natural therefore that President Lowell should first give attention to an analysis of those somewhat elusive terms, an analysis in which he exhibits his usual lucidity of exposition and happily combines general statements with concrete illustrations. This constitutes the first of the four parts into which the volume is divided.

In the second part, the function of parties, the method of ascertaining public opinion, is discussed. Those who are familiar with the

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author's writings need scarcely be told that party government, which Goldwin Smith described as "standing machinery for the demoralization of the people," and which Ostrogorski so severely arraigned in *Democracy and the Organization of Political Parties*, seems to him an "inherent necessity in the working of democracy on a large scale." Why do we have parties? Because of differences of temperament, according to Macaulay; because of the primitive combativeness of mankind, according to Maine; because of the unequal distribution of property, according to more recent writers. But President Lowell, denying the validity of any explanation based upon the nature of the principles which divide the parties, asks us to believe that parties exist simply because they have to. The voters, he argues, can do no more than answer "yes" or "no." to a proposal set before them; and therefore parties necessarily exist as "agencies whereby public attention is brought to a focus on certain questions which must be decided. . . . Their essential function, and the true reason for their existence, is bringing public opinion to a focus and framing issues for a popular verdict." Inquiring minds will hardly be satisfied with this explanation. Even if valid otherwise, it would account only for a bi-partisan system. When President Lowell comes to consider the continental group system, the form which parties take in such governments as France and Italy and Belgium, he seems to impair the validity of his own argument. "When a number of political groups exist," he says, "no question is presented to which the people can answer 'yes' or 'no'." And yet his whole theory of parties is based upon the presumption that they necessarily exist to present just such a question.

The third part of the volume has to do with the methods of expressing public opinion. President Lowell recognizes, though perhaps not so fully as the facts warrant, the debility of representative assemblies in this country and considers the various remedies which have been suggested. It is interesting to observe that he gives no consideration to the remedy which foreign experience would seem to suggest and which has been adopted in three hundred of our cities, the articulation of executive and legislative powers. Attention is concentrated on direct legislation, in both the Swiss and American practice. An extensive appendix (93 pages) contains tables of permanent value which show the vote upon all measures submitted to the people in Switzerland and the United States from the establishment of the initiative and referendum through the year 1912. The attitude toward direct legislation, though critical, is not unfair. Unlike the numerous race of obscurantists who urge principles when they have no facts, President Lowell

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declares that the subject should be studied "not, as too commonly done, from a theoretical standpoint alone, but primarily in the light of its actual operation." He is mainly interested in discovering how far direct legislation is an instrument through which public opinion readily operates. In concentrating attention upon this aspect he has performed a useful service.

The fourth and last part of the volume, brief but much to the point, is concerned with the regulation of matters to which public opinion cannot directly apply. It centers about the function of the expert administrator. The discussion is broadened in scope and value by allusions to the experience of Athens and Rome and the absolutist monarchies, these serving especially to emphasize the grave dangers incident to that distrust of permanent officials which has marked all democracies and especially our own. The note of warning is sounded in no uncertain terms.

> We no longer believe in America today that a man who has shown himself fairly clever at something else is thereby qualified to manage a railroad, a factory, or a bank. Are we better justified in assuming that an election by popular vote, or an appointment by a chief magistrate, confers, without apprenticeship, an immediate capacity to construct the roads and bridges, direct the education, manage the finances, purify the water supply, or dispose of the sewage of a large city; and this when it is almost certain that the person selected will not remain in office long enough to learn thoroughly a business of which he knows little or nothing at the outset? . . . Whether popular government will endure or not depends upon its success in solving its problems, and among these none is more insistent than the question of its capacity both to use and to control experts.

E. M. SAIT.

The Municipalities of the Roman Empire. By JAMES S. REID. New York, G. P. Putnam's Sons, 1913.—xv, 548 pp.

Roman Laws and Charters. Translated with introduction and Notes by E. G. HARDY. Oxford, Clarendon Press, 1912.—vi, 176; vi, 159 pp.

Professor Reid's volume is the outcome of a course of lectures given at the Lowell Institute, Boston, and afterward in Columbia University. It aims to trace the history of the Roman municipalities from the earliest times to the downfall of the empire. Among the important works previously existing in this field are Kuhn, *Die städtische und bürgerliche Verfassung des römischen Reichs* (1864), and Liebenam,

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Städteverwaltung im römischen Kaiserreiche (1900), both scholarly studies carefully prepared and supplied with abundant references to the sources. The author of the present volume has possibly examined an even wider range of material, but he gives no reference to it, and can scarcely hope therefore that his work will acquire the reputation of these earlier books, or prove especially useful to any class of readers. The general student, as well as the scholar, ought to make himself acquainted with the sources of information. As the style of this book is obscure and repellent, and as the treatment lacks continuity, it can never become popular. But it has at least the merit of calling attention to the importance of the municipality as an element of the empire. In the presentation of Roman history, local conditions should have a larger place than they have hitherto been given; but, says Professor Reid, no one now lives or ever will live who can perform the gigantic task of reconstructing a unified history of the empire from the vast local material. "That Colossus who bestrid the ancient Roman world, Theodore Mommsen, was and will remain the last man whose capacity and knowledge were equal to so great an enterprise" (page 3). This view is unnecessarily pessimistic. Why should we not hope for the appearance of a historian of the empire equal in ability to Mommsen but free from the serious bias, and the tendency to exalt one character by belittling another, which, according to Professor Reid (pages 15, 193) were defects of Mommsen?

It is unfortunate that the author has included (Chapter II) a presentation of the growth of early Rome, a subject with which he is totally unacquainted. We may note, for instance, his idea that the Subura (Sucusa) and the Fagutal were valleys (page 32), and that in the "city of the four regions" the Septimontium composed one region and the Quirinal and Viminal two others (page 33). His evidence for the original independence of the Quirinal is absurd; in fact it is difficult to imagine how the chapter could be made less sound and scholarly. If the author could not read the recent literature on the subject, he should at least have consulted a good manual, like Platner, *Typography and Monuments of Ancient Rome*. Far more reliable are the chapters dealing with the late republican and imperial periods; and yet even here the reader can find little evidence of clear thought or constructive power. It would be exceedingly regrettable if the publication of this work should prevent some other scholar from the preparation of a really useful volume on the subject.

Dr. Hardy's book, though less pretentious, has a definite place and purpose, and will undoubtedly prove far more serviceable. The volume

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is composed of two parts. The first contains "Six Roman Laws," published in 1911, and the second "Three Spanish Charters and Other Documents," newly added. The original texts are not given, but translations merely, with introductions and commentary. Among the six laws are the *lex Acilia Repetundarum* of the tribunate of C. Gracchus, the *lex Agraria* of 111 B. C., the *lex Municipalis Tarentini* and the so-called *lex Julia Municipalis*. The three Spanish charters are the *lex Coloniae Genetivae Juliae* and the municipal laws of Salpensa and Malaca issued in the principate of Domitian. As the Agrarian law of 111 is indispensable to an understanding of the Gracchan reforms, and as the extensive *laeunae* make it very difficult to read, the translation will undoubtedly prove to be of the greatest value to students of the period. It will be seen, too, that as several of the laws are municipal, the work overlaps that of Reid. On some points the opinions of the two writers differ widely. According to Reid the greater part of the "Julian municipal law" belongs to the period immediately following the Social War. In this matter we may conjecture that he has written under the influence of H. Legras, *La Table latine d' Heraclée* (Paris, 1907), whose views have been refuted by E. Pais, *Circa l'età e la natura della "Lex Latina" di Eraclea* (Rome, 1911), a careful study, which Professor Reid seems not to have used. Dr. Hardy, on the other hand, goes somewhat too far in assuming without hesitation its identity with the *lex Julia Municipalis* mentioned in other documents. To Reid its nature is an insoluble puzzle; to Hardy it is as clear as day.

The charters of Salpensa and Malaca, Dr. Reid mentions but incidentally. His method of flitting rapidly from one place to another leaves us with a hazy idea of the subject under consideration. It is only in the chapters on "Internal Administration" (XIII), on "The Process of Decay" (XIV) and on "Social Aspects" (XV) that a degree of unity is attained. A far clearer, though necessarily incomplete, idea of the municipality may be gained from the charters as translated and explained by Dr. Hardy. A better method of presenting the subject than that adopted by Reid would perhaps be the use of Hardy's documents and of all other available material for the reconstruction of the economic, social and public life of the municipality with less attention to individual localities. Professor F. F. Abbott's *Municipal Politics in Pompeii* (Chicago, 1907), a brief but delightful study, might be expanded into a volume on municipalities in general without loss either of interest or of scholarship.

GEORGE WILLIS BOTSFORD.

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English Local Government: The Story of the King's Highway. By SIDNEY and BEATRICE WEBB. New York, Longmans, Green and Company, 1913.—x, 279 pp.

"Paltry skirmishes and plots are reported with absurd and useless minuteness; but improvements the most essential to the comforts of human life extend themselves over the world, and introduce themselves into every cottage, before any annalist can condescend, from the dignity of writing about generals and ambassadors, to take the least notice of them." Two generations have read and written histories since Lord Macaulay wrote this withering criticism of Mitford's *History of Greece*, and though the pomp and circumstance of empires have continued to charm the imagination of historians, year by year his rebuke has become less pertinent, and the light of scholarship has turned into new places to bring into view much that the older writers would have dismissed as vulgar or inconsequential. Much of the credit for the improvement must be yielded to the economists, who, when they turned attention from their economic man living in solitude upon his mythical island, to study seriously the complex arrangements by which real men get their living in society, found they could not explain the most common and familiar institution or practice without recourse to its history. With the lamp of scientific method, strange paths have been explored and materials the most diverse and unexpected have been brought to light, examined and made to contribute to the history of man; and the task has been so fascinating as well as so useful that many who entered casually have remained to "profess" history as their major interest. Such, fortunately for all students of society, seems to have been the experience of Sidney and Beatrice Webb, whose third volume of their series on *English Local Government* has recently appeared as *The Story of the King's Highway*.

The authors point out that a certain timely interest attaches to the study now that motor traffic has brought new problems to road administration, but a history of the highway as a great permanent bond of civilization would be always timely. With scholarly thoroughness the inquiry has been carried back to the sunken lanes and ridgeways of ancient Britain. In treating the Roman ways (as in all other parts of the essay) attention is paid less "to the mechanics of the roads than to the social organization involved in their maintenance" (page 3), though beyond the fact that they were built by soldiers for soldiers not much can be said. After observing that the King's Highway up to the eighteenth century meant merely a right of passage across certain

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manorial lands rather than a permanent strip of land with a surface calling for special maintenance, it is concluded that the manorial obligation was simply to keep in some convenient part a track free from impediment. Even the few roadways that had been built for carts fell off during the fifteenth and early sixteenth centuries because of decreased use due to the consolidation of large estates, the "Great Pillage" of the monasteries, the agricultural revolution which replaced carted sacks of corn with droves of sheep who actually preferred a soft and unpaved road, and the general decay of the manorial organization upon whose firmness highway maintenance depended. After the famous Act of 1555, "statute labor" under an unpaid and untrained surveyor of the highways proved so wasteful and so ineffective that the only way roads were maintained at all was by monies collected in fines upon parishes by justices of the peace for non-performance of the lawful work. Americans may read the rather dismal chapters on the old parochial system of "working out the road tax" with sorrowful sympathy, since in every state but five this is, or until recently has been, the illusory device expected to maintain the roads, "the sort of promiscuous popular gathering on the roads once a year," to use the authors' phrase (page 30). Like many other phases of local government it does not make a cheering tale; there is much that is mean and narrow, parochial in its unpleasant connotation.

There was much parliamentary tinkering, of course, but as long as control stayed with the parish or interested county justices, and as long as the wretched system of statute labor survived with its trickery and its farcical impotence, nothing like a national plan of highways could be expected. And, indeed, none was really needed until the advent of "new users" in the seventeenth and eighteenth centuries, when the horse with pack or saddle came to be superseded by the cart and coach. The commercial revolution had done its work in stimulating trade, until the slow, expensive trains of laden animals winding along the narrow causeway raised from the mire proved inadequate to meet the needs of the new England. "Road waggons," coming in about the time of Shakespeare, required, for one thing, bridges instead of fords; and though no parish was by common law obliged to build a bridge, when one was once erected by private enterprise and became a part of the King's Highway, the parish became liable for its maintenance. Moreover, the "new users" needed a hard, firm surface (dreaded by the drovers) and a bed as straight and level as the contour of the land allowed. The new traffic was the offspring and the servant of the town, and the country parish through which the roadway ran could scarcely

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be expected to maintain a surface quite beyond the local need. The inevitable outcome was the turnpike for which those who used it paid in tolls. One of the most interesting chapters of the book deals with these private ventures—their clumsy regulations, the riots among the carters occasioned by the introduction of tolls, the graft and systemless finance; the fantastic fads of experimental engineering, and their undeniable importance in the evolution of transportation.

"Pontifex Maximus Telford" and "Macadam the Magician" share a chapter. The former's achievement in the Holyhead Road for the post office, and the latter's in the Great North Road at the instance of the Board of Agriculture come in for treatment, though the work of neither of those great Scotchmen is presented with anything like the detail that would satisfy the reader's interest, nor, it would seem to the reviewer, that would represent their true importance in the history of roads. It is disappointing, too, to find picturesque John Metcalfe relegated to a tiny footnote (page 154), though perhaps it is as well that one should still go back to Samuel Smiles for discussion of these engineers, just as one will turn to Reginald Ryves' *King's Highway* (1911) for a general historical treatise on road construction. After these men had solved the problem of roadways for wheel traffic, legal readjustments were necessary to provide for more regular maintenance; and we are given by the authors an account of English highway legislation in the nineteenth century with attempts toward consolidation, which is probably the only such summary in existence.

Last in the book comes a chapter on the "new users" of our own generation, the bicycle and the automobile. Here we have vividly and carefully set forth the consternation that followed upon the advent of the motor car, dangerous to life and destructive to roadways, filling the wayside homes with dust it had torn from the pavement. We are told of the happy way in which a natural but ill-reasoned protest was modified into a demand for licensing of cars and drivers and the limiting of speed; then of the new interest of the wealthy in the maintenance of good highways and the consequent movement toward central administration which has shown its latest phase in the creation of the Road Board with its grants of aid to parishes; and, lastly, of the petrol tax of the Budget of 1909 whereby these advocates were made to pay a proper share in the expenses which their reforms entailed.

Though the subject at hand would not attract a rhetorician, this chapter, like the rest of the book, might serve as a model of clear and easy narrative, at once dignified and engaging, with a marching quality hat suggests the slow but certain movement of great though unseen

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forces conditioning the life of generation after generation. As to the scholarship of the authors little need here be said. They are, as Mr. Sidney Low has said, "as learned as the Prussian, as lucid as the Frenchman, and as scholarly and careful as the Austrian." Their latest offering is another monument of erudition. Pamphlets, diaries, parish histories, monographs, statutes and law treatises are adverted to in bewildering number. The fullness of the notes and the fact that so many points are made here that might more properly come into the body of the text (e. g. notes printed on pages 11, 147, 150, 180 etc.) deepens the impression that this book is too long for a mere manual and too short for a full treatise. Much would have been gained, it would seem, had the work been allowed to take a natural expansion to two volumes. The notes are appended to each chapter so that they "can, according to taste, with equal convenience, be studied or skipped" (page vii), but their service to the student would have been enhanced had some indication been given of the page of the text as to which points made were annotated so that the note might be read, when desired, in its proper connection. But on such a sincere and valuable work such criticism may seem captious. In the field of social history it is one of the significant works of the year and worthy of the reputation of the authors whose laborious and penetrating scholarship is, among other achievements, adding so much to our store of knowledge of English local government.

DIXON RYAN FOX.

COLUMBIA UNIVERSITY.

William Pitt and the Great War. By J. HOLLAND ROSE. London, G. Bell and Sons, Ltd., 1911.—xiii, 596 pp.

Mr. J. Holland Rose is the most industrious and, perforce, the most productive of English historical scholars. In two stout volumes on Pitt, of about six hundred pages each, he has given us more to read about him than we could hope for, and at the same time he has bereft us of the pleasure of thinking about him. In short, in the volume before us he has diffused the personality of Pitt through six hundred pages on war, politics and diplomacy. The Pitt whom Rose describes may be disjointed at the end of any chapter without operative shock or loss of blood.

Mr. Rose, it must be said to his credit, is one Englishman who has seen clearly a gap pointed out by a German scholar. For it was Felix Salomon of Leipzig, who among modern scholars first attempted an

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adequate treatment of Pitt, as it was another German, von Ruville, who first gave us anything like an adequate biography of the elder Pitt. Let it be said in passing that Mr. Rose's idea of a bibliography is indicated by the omission of Salomon's work from "the chief works referred to."

This need of a definite and adequate treatment of Pitt is not met by Mr. Rose's volume. The reason is simply that he has not been equal to the task of mastering his material, not because he had too much, but one suspects because in relation to all the vast material available for the solution of problems in this period, the material actually used by Mr. Rose was small, and his neglect of vast quantities made what he did have, worth exploitation at the cost of Pitt and of the real problem of relating him to his age and its portentous and complex issues of life and death for nations. Mr. Rose is so impressive in his general allusions to storehouses of documentary material and so restrained in specific references, so full where others have not chosen to digress or where there is monographic literature which has not come under his notice, that one feels reasonably certain that he never disciplined his sense of the worth-while by long and unremitting labors in an attempt to go to the bottom of his subject—"Pitt and the Great War." So much space is given to telling what is not new, or to telling what is new but not important, or to telling without relation to Pitt what is new and important, that the chief actor seems relegated to the wings while Mr. Rose pushes unrelated pieces of scenery across the stage Naval operations do not hang together with military, military operations take their place irrespective of diplomacy. This, it may be said, is the fault of Pitt as well as of his biographer. When it comes to domestic affairs nothing could be more skilful than the way Pitt's momentous decision not to push parliamentary reform is concealed in the chapter on "Royalists and Radicals." In this chapter the author does indicate somewhat unclearly that the political movements were but the weather-vanes of the social unrest due to the beginnings of a new economic age. Mr. Rose evidently does not know the monographs of Dr. Walter Hall and Dr. Laprade in this field.

In the treatment of foreign affairs, e. g. the Treaty of Basel and the Prussian neutrality, he takes the traditional English view and complains because it "robbed England of her gains in Hayti and Corsica." Concerning the policy of the Directory he should have been able to give a better balanced view on the basis of Guyot's work.

Mr. Rose is not a hero-worshiper, except perhaps in the large part he attributes to Pitt in the ultimate overthrow of Napoleon. Pitt's errors are freely exposed and criticized without however the accom-

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panying analysis of the mental processes and cumulative contemporary circumstances, which explain his actions, even if they do not justify them. It is not enough to say that he was following the policy of his father in the Seven Years' War.

Mr. Rose's presentation of Pitt's policy in Irish matters and his effort to give an account of the radical and Jacobin movement in England seem to the reviewer the best parts of this volume. The best point in his treatment of foreign affairs is that which he stressed in his little book on the *Revolutionary and Napoleonic Era*, i. e. that "Poland was the cancer which ate into the vitals of the First Coalition."

GUY STANTON FORD.

UNIVERSITY OF MINNESOTA.

A History of Preston in Amounderness. By H. W. CLEMESHA. Manchester at the University Press, 1912.—xi, 344 pp.

The University of Manchester has already won for itself a distinct place in historiography by the service which it has rendered students of English social history, in publishing intensive studies of localities on the one hand and of industries upon the other. The conception of English history which includes such contributions as those of the Manchester Economics Department on the Industrial Revolution, especially on the cotton industry, and on the other hand the technical monographs based upon borough records over which Professor Tait's genius seems so largely to preside, is a conception far removed from the quiet library of a bishop of Oxford. It is doubtful if the authors of these different contributions realize themselves the significance of the possible synthesis which their labors suggest, a story of social evolution seen in direct connection with the motor forces of the common life. If they have so seen things, they have not, so far as we know, disclosed the fact as yet. But no body of historical research, not even that which we owe to the London School of Economics, is of more fundamental importance in laying the basis for a social history which will be scientific in the genuine historical sense. It is imperative that the municipalities and villages of England should be studied in detail, their occupations, the fluctuations in their trades, their varying fortunes with the shifting of agricultural and industrial population, the statistics of their local rates, minute but vital items as to wages, cost of living etc. A study of such local details in the France of the old régime is now remaking our conceptions of the bases of the Revolution. Undoubtedly this method when applied to England will furnish similar revision of perspectives.

The present volume is a thorough-going, scholarly piece of work,

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based directly upon original documents. It begins with a chapter upon the Borough and its Lords down to the union of the Duchy of Lancaster with the Crown; then follows the description of town life in the Middle Ages, given in terms of a translation of the Costumal. Here the author was fortunate in being able to translate the text already prepared by Miss Bateson; for Preston had been granted the customs of Breteuil. The Guild Merchant is similarly analyzed, and then, after a survey of the transformations under Tudors and Stuarts, we come upon the Industrial Revolution and the problems of modern times. It must be admitted, however, that here our author hardly sees the woods for the trees. Only the student who proposes to use these data for something else and the patriotic citizen of Preston will be likely to read the book through.

A final word of commendation should be added for the form in which this, as well as the other studies of the Manchester University Press, appears. There are helpful diagrams and an exhaustive index.

J. T. SHOTWELL.

The Evolution of States, An Introduction to English Politics. By J. M. ROBERTSON. New York, G. P. Putnam's Sons, 1913.—ix, 487 pp.

Slowly but steadily the English-reading public has been awakening to the calibre of this versatile author. Long known mainly as an uncompromising "free-thinker," the author of *Pagan Christs* and *Christianity and Mythology*, the first notable exponent of the Christ-myth theory, it was the chief business of reviewers to show up the slips in the author's scholarship, and to ridicule his conclusions. But Robertson kept on. His scholarship was broad if it did sometimes miss a point; and he brought to his problems a brain of more than ordinary power and a capacity for work which excites the admiration of even his critics. Still in the prime of life, he has some twenty-five works to his credit, some of them apparently embodying years of preliminary study. And now, although winning his way to the upper spheres of public life as a member of the present liberal administration, he continues his scholarly and literary career. When one learns that this has been accomplished in the face of personal discouragement, one approaches this book in a sympathetic frame of mind. The book, however, needs no special favors. It is a solid volume of suggestive theory, backed up by a mass of historical data; and every sociological student of history should take account of it.

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In conception *The Evolution of States*—which is a much revised and worked-over edition of the *Introduction to English Politics*—is a sociological interpretation of the evolution of social groupings into political moulds. It starts with a protest against the literary tradition which permits one to speak of a nation as if it were an individual unit with a peculiar "genius" and not a varying complex of diverse forces. This initial caution is not the least useful contribution of the whole volume. For it enables the author to rid himself at once of that readiest of all fallacies in the interpretation of history, that of "explaining a phenomenon in terms of the abstraction of itself"—as Puritanism by "the Puritan spirit," Christian civilization by "Christianity," and English history by "the English character" (page 369). The value of such insistence upon real and not pseudo analysis before attempting to write history is clearly set forth in a criticism of Bryce, who in the *Holy Roman Empire* allows himself to run along as follows:

> As in time past Rome had sacrificed domestic freedom that she might be the mistress of others, so now [in the later Empire] to be universal she, the conqueror, had descended to the level of the conquered [in respect of Caracalla's edict giving to all subjects of the Empire the rights of Roman citizenship]. But the sacrifice had not wanted its reward. From her came the laws and the language that had overspread the world; at her feet the nations laid the offerings of their labor; she was the head of the Empire and of civilization.

Robertson's comment on this is most illuminating:

> The "she" of this passage I take to be as purely imaginary an entity as Phlogiston; and it is not easy to see how a method of explanation which in physical science is found worse than barren can give any edification in the study of history. To say nothing of the familiar explanation that Caracalla's sole motive in conferring the citizenship on the provincials was the desire to lay on them corresponding taxes, the proposition has no footing in political actualities. "Rome's self-abnegation that she might Romanise the world" expresses no fact in Roman volition, thought, or deed; it is not the mention of a sentiment which swayed men's action, but the attempt to produce a medley of actions to the semblance of a joint volition. There was no "Rome" capable of "self-abnegation" and susceptible of "reward." Why, then, should it be said? It is said either because the writer permits himself to fill in a perspective with a kind of pigment which he would not employ in his foreground, or because he is still too much under the sway of old methods when he is generalizing conventional knowledge instead of analytically reaching new.

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The way this point is handled will give some idea of the style of the book as a whole. But it should be remarked that the Hegelian method of explanation by abstraction is dismissed in a footnote. "The trouble here is the cherished tendency to verbal abstraction." Why should a rationalist waste time over Hegel?

So from such preliminaries we proceed to the positive side of the author's theory, for which the author offers most grateful recognition to Professor Giddings. This is presented in a decidedly original form. First comes a sketch of Roman political evolution, then of the Greek, the simpler before the more complex, then a statement of the "laws of social-political development," then (in Part II) a survey of Roman and of Greek economic evolution, and in Part III a treatment of the "culture forces in antiquity." Part IV deals with the Italian republics; Part V with the lesser European states, and finally, Part VI, (pages 369–473) offers a survey of "English History until the Constitutional Period," that is, until the eighteenth century. Throughout, the narrative is buttressed by long discussions of discussable points, solidly loaded with citations from authorities, the interjected material being printed in different type to distinguish it from the continuation of the theme. There are fairly abundant footnotes as well. Obviously it is not a book for the uninitiated.

To return to the fundamental thesis, it is an attempt to show how societies hang, as it were, on the poise of contending "biological" forces, which take shape in different forms as societies move along from the primary to the more and more complex groupings. The author states the propositions as follows:

> We may . . . set forth the all-pervading biological forces or tendencies of attraction and repulsion in human affairs as the main primary factors in politics or corporate life, which it is the problem of human science to control by counteracting or guiding; and we may without further illustration set down the principal modes in which these instincts appear. They are, broadly speaking:
>
> (a) Animal pugnacities and antipathies of states or peoples, involving combinations, sanctified from the first by religion, and surviving as racial aspirations in subject peoples.
>
> (b) Class divisions, economically produced, resulting in class combinations and hostilities within a state, and, in particular, popular desire for betterment.
>
> (c) The tendency to despotism as a cure for class oppression or anarchy; and the spirit of conquest.
>
> (d) The beneficent lure of commerce, promoting intercourse, countered by the commercial jealousies of states.

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(e) Designs of rulers, giving rise to popular or aristocratic factions—complicated by questions of succession and loyalism.

(f) Religious combinations, antipathies, and ambitions, international or sectarian. In more educated communities, ideals of government and conduct.

In every one of these modes, be it observed, the instinct of repulsion correlates with the instinct of attraction. The strifes are the strifes of combinations, of groups or masses united in themselves by sympathy, in antipathy to other groups or masses. The *esprit de corps* arises alike in the species, the horde, the tribe, the community, the class, the faction, the nation, the trade or profession, the church, the sect, the party. Always men unite to oppose ; always they must love to hate, fraternise to struggle.

It is impossible to enter upon a discussion of the theory here advanced. But it may at least be pointed out that the psycho-social interpretation seems to stress one kind of data after all, however complex its character. The economic basis tends to sink too much to the background, and the common occupations of men thus to be somewhat obscured. Robertson, who himself gave us the best study of Buckle that has ever been made, does not forget the materialist and economic side of the agreement. But from his arrangement of the data and the emphasis of his other points, we imagine that his readers may do so. But then, it is hard to strike the balance.

We cannot leave the book without a reference to the genuinely exalted style of the author at his best. Few passages in literature can rival the closing pages, where he discusses the question of an underlying purpose or a meaning to "progress." He is soberly aware of the long history of past delusions in this matter, and warns us that "to make a new aspiration pass for a law of progress merely because it is new would, of course, be only a fresh dressing of old error. There is no security that the scientific form will make any ideal more viable than another." We quote from the remainder of the passage. Nowhere else, so far as we know, has the concept of progressive control—that keynote in our sociology—been so splendidly presented in its philosophic setting, as the *motiv* in the *comédie humaine*.

The hope of a moral transformation of the world is a state of mind so often seen arising in human history that some distrust of it is almost a foregone condition of reflection on any new ideal for thoughtful men. . . . A hundred times has the hope flowered, and withered again. Confident rebellions, eager revolutions, mark at once its rise and its fall. In our own age the new birth of hope arises in the fact of what might have seemed the most definitive frustration ; it becomes an ideal of peaceful transformation under

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the sole spell of social science, with no weapons save those of reason and persuasion. The science of natural forces has widened and varied life without greatly raising its mass. Yet the new science, we would fain believe, will conquer the heightened task. In the fulfilment or non-fulfilment of that hope lies for the coming age the practical answer to the riddle of existence.

Without such a hope, the study of the past would indeed be desolating to the tired spectator. . . . Considered as a tale that is told, it seems to speak of nothing but blind impulse, narrow horizons, insane satisfactions in evil achievement, grotesque miscalculation, and vain desire, till it is almost a relief to reflect how little we know of it all, how immeasurable are the crowded distances beyond the reach of our search-light. Alike the known and the unknown, when all is said, figure for us as fruitless, purposeless, meaningless moments in some vast, eternal dream. . . . Yet, through all, the fascination of the inquiry holds us, as if in the insistent craving to understand there lay some of the springs of movement towards better days. . . . Still, the sensation yields no sense of fruition; Rome the dead, and Greece the undying, drift from our reach into the desert distance. . . . The vision of that vanished eternity renews the intolerable burden of the spirit baffled of all solution. . . . Great empires waxed to the power of wreaking infinite slaughter, through the infinite labor of harmless animal souls; and seas of blood alternately cemented and sapped their brutal foundations; and all that remains of them is a tradition of a tradition of their destruction, and the shards of their uttermost decay. Not an echo of them lives, save where perchance some poet with struggling tongue murmurs his dream of them into tremulous form; or when music with its more mysterious spell gathers from out the inscrutable vibration of things strange semblances of memories, that come to us as an ancient and lost experience re-won, grey with time and weary with pilgrimage. But to what end, of knowledge or of feeling, if the future is not therefore to be changed?

Save for such a conception and such a purpose, the civilizations of today could have no rational hope to survive in perpetuity any more than those of the past. The fullest command of physical science, however great be the resulting power of wealth-production, means no solution of the social problem, which must breed its own science. The new ground for hope is that the great discipline of physical science has brought with it the twofold conception of the reign of law in all things and the sequence of power upon comprehension, even to the controlling of the turbulent sea of human life. With the science of universal evolution has come the faith in unending betterment. And this, when all is said, is the vital difference between ancient and modern politics: that for the ancients the fact of eternal mutation was a law of defeat and decay, while for us it is a law of renewal. If but the faith be wedded to the science, there can be no predictable limit to its fruits, however long be the harvesting.

J. T. SHOTWELL.

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Staffordshire Pottery and its History. By JOSIAH C. WEDGWOOD. New York, McBride, Nast and Company, 1913.—xi, 229 pp.

In this short volume Mr. Wedgwood follows out three separate lines: the development of English pottery, the history of the families with which the art is connected, and the evolution of the pottery industry from the individual to the factory stage. Naturally within the compass of little more than two hundred pages, it is impossible that any one of these three themes should be treated exhaustively. But steeped as he is in the lore, the traditions and the associations of the potteries, Mr. Wedgwood has made a most readable contribution both to English industrial history and to the literature of the arts. Mr. Wedgwood is fifth in descent of that family whose name, borne by the second of the line, is inextricably associated with English pottery. In his book he has traced out the predecessors, contemporaries and successors of the great Josiah Wedgwood, and has allotted to each his place in the developing industry. Incidental to this personal story, it has been necessary to describe the various steps by which pottery-making was raised from the primitive condition in which it existed in England in the middle of the seventeenth century, to the position of one of the fine arts, with all the varied forms and materials in which this art was embodied. The development of pottery in itself is not, however, Mr. Wedgwood's main theme, and this volume would seem slight and unsatisfactory to those who demanded an exhaustive treatise on English pottery and chinaware.

The most important contribution made by Mr. Wedgwood is his story of the trade; of the concentration of pottery-making within the limited area in Staffordshire known as the Potteries; of the transportation of raw materials—clay and coal carried on horseback from Chester and Whitfield, and crates of pottery similarly conveyed to Winsford; and of the gradual development of the industry from the one-man-one-oven stage to the great manufactories of the present day, when four hundred factories employ in the aggregate fifty thousand men, women and children. Mr. Wedgwood, whose name is well known in English politics as a Liberal member of Parliament and an ardent advocate of progressive measures, traces with great fairness and sympathy the struggles of the workpeople in the Potteries for a larger share in the returns from the industry. He shows the unfairness of the old relations between masters and servants, by which the men were held in what was practically a condition of servitude, without even the certainty of main-

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tenance; and he tells with approbation of the improvements effected through the trade unions and by means of factory legislation. The deepest interest to Mr. Wedgwood himself is undoubtedly in the personal and family histories which are embodied in the volume. All the men whose names are connected with the English pottery industry since 1650 are mentioned and their family relationships traced out, and it is an indication of how this aspect of the pottery industry appeals to Mr. Wedgwood that the only index to the volume is an index of the men whose names are thus mentioned. Mr. Wedgwood has used the works of William Burton and Professor Church in describing the pottery, but has added much material derived from the Tunstall Court Rolls and from the manuscripts of his great-great-grandfather, Josiah Wedgwood.

ANNIE G. PORRITT.

HARTFORD, CONNECTICUT.

English Life and Manners in the Later Middle Ages. By A. ABRAM. New York, E. P. Dutton and Company, 1913.—xiv, 352 pp.

Miss Abram has already shown her mastery of this field in her book on *Social England in the Fifteenth Century*, reviewed some time ago—a study which supersedes everything else in its field. The present volume differs from the earlier one in that it is designed more for the general reader. There are some quaintly picturesque illustrations, not a few from personal photographs; and the general make-up of the book is suggestive of that deft handling which somehow seems to characterize English publishers as contrasted with our own. (The book is printed by Routledge.) But in addition to this outward appeal, one finds, tucked away at the back, over fifty pages of exact references and citations, following the text page by page. These show the student at once what a careful scaffolding was erected before the book was built up with such a pleasing exterior.

The scope of the book is about what one would expect from the title. The aristocracy, townsmen, church, business, family-life, houses, manners and customs, education, travel, aliens and unemployed—all receive due treatment. There is also a specially clear chapter upon the position of women, a matter which had attracted the author before. As Luchaire in France, so Miss Abram in England finds little in the Middle Ages to encourage a romanticist sentimentality. She gives a prosaic picture of details over which no silver lights of distance are allowed to

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transform the scene. One is, as it were, reading in the evening paper of the doings of yesterday—and some of them are not to be repeated by descendants of Puritans.

There seems little to criticize in such a work. There is perhaps a little risk in generalizing a "mediæval man" from even so much data as the author has at her command. For instance (page 270), she asks "a most difficult question—were they or were they not religious?" and comes to the conclusion that "they" gave little sign of it in their treatment of the clergy, but that they had a firm and chastening belief in Hell. Over against this is set the sense of humor "they" exhibit, exuberant, boisterous, and their attachment to the good things of this world. Now, is not all this a bootless inquiry? Some people were religious, some were not. The question is one of much nicer psychological analysis than this, if it can ever be answered. Certainly the religiosity of the middle ages has been overdrawn, but then the whole conception of a middle age that includes such long and diverse epochs is one that needs recasting. Miss Abram is really describing the closing era of the mediæval period.

The book is cordially recommended.

J. T. SHOTWELL.

The Fall of Protection. By BERNARD HOLLAND. New York, Longmans, Green and Company, 1913.—pp. xi, 372.

The battle for tariff reform in Great Britain is shifting from economic to political ground. Mr. Holland's admirable book is a good example of the newer argument for protection and inter-imperial preference, an argument based on the history of the free-trade movement.

While Mr. Holland devotes chief attention to the decade 1840-50, he gives a connected account of the whole movement for the overthrow of protection. After describing briefly the old national and colonial system, the work takes up successively the removal of manufacturing protection, the passage of the Bank Act of 1844, which is properly related to other parts of the new policy, the repeal of the Corn Laws, the wiping-out of the Navigation Acts, and the fall of the colonial system. The body of the book is given up to a study of the economic and political forces that brought about the commercial policy of liberalism. Its real point is in the author's appraisal of the worth of that system under twentieth-century conditions. He regards it as wholly inadequate.

Though the book is frankly an historical argument for an inter-im-

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perial preferential trade policy, it is none the less a scrupulously fair account of the men and measures of the early Victorian period, so far as they dealt with trade affairs. The story is told largely from the Hansards and from the correspondence of public men, both of which sources are used with skill and judgment. Peel, the central figure, emerges perhaps a bit more of a politician, but no less of a statesman. If Disraeli, the arch-imperialist, comes in for much of quotation and approving comment, Cobden and Bright are none the less fairly represented and judged. There is understanding in such a sentence as this:

> If the history or law of England had caused the land to be divided among a great number of small cultivating freeholders, it is certain that the complete abolition of agricultural protection would not have been carried, however good the economic theories or arguments, till at least a much later date, and probably never [page 186].

The revolution of 1846, the author holds, was made possible by England's undisputed control of the sea, her manufacturing supremacy, and her colonial markets that could be held, if necessary, by force of arms. Can the same policy be maintained now that these conditions have changed?

The author's answer is an emphatic negative, and he is prepared to argue the matter on both insular and imperial grounds. From the first point of view, continued free trade, in Mr. Holland's view, means the continued decline of agriculture and then of staple manufactures, with a population living increasingly from oversea dividends. Such a development he holds socially undesirable. It need not be pointed out that his argument is by no means impregnable economically. From the imperial standpoint, our author urges that tariff preference is the economic cement essential to imperial unity.

Just at this point, Mr. Holland, like nearly all the protectionist imperialists, makes a large assumption, namely, that a mutually satisfactory preference between Great Britain and the colonies is possible as a basis for the imperial sentiment. If the preference is to be really effective, it must assume that England is to manufacture for the colonies, while they furnish her with food and materials. If any one thing is evident at present, it is that Canada and Australia are determined to manufacture for themselves. They are no more willing to see their own manufactures displaced by British than by foreign goods; when the existing preference has actually let the English manufacturer interfere with the colonial producer, as in the case of the Canadian woolen industry, the preference has been promptly whittled down. The fact is that the existing

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preference is based on sentiment and not the sentiment on preference. No one has yet succeeded in showing how the adoption of protection by England would reverse the situation. The imperialists have simply assumed, often unconsciously, the willingness of the colonies to maintain indefinitely the colonial economic status. Mr. Holland shares the assumption with all the rest of them. Protection in the colonies stands in the way of protection in England.

H. R. MUSSEY.

The Credit System. By W. G. LANGWORTHY TAYLOR. New York, The Macmillan Company, 1913.—x, 417 pp.

"This book," says the preface, "explains what credit is, what it does, and how it works."

To the reviewer this first sentence holds out as vain a promise as the first line of "Sordello." Not that Professor Taylor, any more than Browning, is wilfully obscure. On the contrary he has labored hard to give intelligible expression to his thoughts; he has put a table of contents at the head of each chapter, and a marginal summary beside each paragraph. But the mode of utterance natural to him sounds strange to common ears. Let one specimen suffice: "Logical analysis is agnostic of antecedents, before a chosen point of departure" (page 196).

The obscurity of the book does not rise wholly from the style. It is partly an indirect consequence of Professor Taylor's effort to look at credit from the viewpoint of evolution, "a doctrine itself traced to an early economist, Malthus" (page 223). This effort need raise no fog about the subject, did not Professor Taylor share the unhappy notion that the application of evolutionary theory to economics begins naturally "with a pervasive use of biological analogy, which is believed to be of the essence of explanation" (page v). The line of thought thus marked out leads to such results as the following: "The simple promise to pay money is regarded as the characteristic, ultimate fact of credit, out of which all credit phenomena are constructed, cellwise; the circumstances under which such promises are made are looked upon as environmental" (page v); Marshall's implied "conception of a series of markets" "is but the economic application of the biological law of environments" (page 211); and "the market establishes the relation of the functional members to the environmental members of the economic pairs" (page 216). To the reviewer, these biological analogies are not explanations, but useless puzzles. And he objects strenuously

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to the notion that the drawing of such analogies is a proper or even a permissible way of transforming economics into an evolutionary science.

The range of topics subjected to this biological interpretation includes capitalization, interest, the fluctuation of prices in short periods and long, business crises and monetary standards. The conclusions reached concerning the "organic relationship" of credit, prices and interest (page 8) are stated in ordinary language on pages 203, 204, 210, 211 and 231–3. Other interesting results which may be quoted with a degree of confidence are that crises are caused by the "defeasance of expected profits" (page 160); that the forerunner of a rise in commodity prices "is promotion rather than mere speculation" (page 252); that the quantity theory gives no adequate account of changes in the purchasing power of money (Chapter X); and that we are not yet in a position to frame an ideal standard of value (Chapter XIV). Indeed, such parts of the book as the reviewer thinks he understands are highly suggestive. The greater is the pity that so much is befogged by an obscure style and by useless analogies.

WESLEY C. MITCHELL.

COLUMBIA UNIVERSITY.

Vorlesungen über Nationalökonomie. By KNUT WICKSELL. Theoretischer Teil, Erster Band. Translated by MARGARETHE LANGFELDT. Jena, Gustav Fischer, 1913.—xi, 290 pp.

This is the first German translation from the Swedish of a part of Professor Wicksell's course of lectures as given in the University of Lund. It is to be followed by a volume on Money and Credit, to complete the theoretical part, and later by two other parts, "practical" and "social," respectively. Public finance will be treated in the last of these.

This volume begins the series in the manner of the German *Grundlegung*. It consists of four divisions, treating of four doctrines: (1) of population, (2) of value and exchange, (3) of production and distribution, and (4) of the formation of capital. The first division is in the nature of a separate monograph on the population problem, to be used as the foundation of the whole theoretical treatment of economics. It is an admirably compact yet comprehensive essay, but it is not made the basis upon which the remainder of the book is built; indeed, it seems to be in no way referred to in the theory of value and distribution making up the remainder of the volume. The author holds that there is an ideal degree of density of population that is best for the

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general welfare, and that in many countries this is already exceeded at present. He declares that this view of the question has been entirely neglected by contemporary economists, but adds in a footnote a reference to the presidential address given by the reviewer in December, 1912, before the American Economic Association, which has "*jenes Problem in ganz der selber Weise, wei es hier geschehen ist, aufgefast und behandelt.*"

A large part of this volume covers the same field as that of the author's *Über Wert, Capital, und Rente*, published in 1893. As he explains, his endeavor has been in the main to sum up the most valuable results of the studies of Walras, of Jevons, of Böhm-Bawerk and of their disciples. He modestly claims to have made, however, a number of contributions in minor matters. This work of exposition, comparison and correlation of the conclusions of others is done carefully and with fine discrimination, not without additions here and there of the author's own differing views. The atmosphere of the discussion is, however, that of a decade or more ago, and there is no suggestion of the more recent views on value, rent or capital in Austrian and American writings. The author's attitude toward the interest problem is typical. He says: "I have seen no occasion to depart in any way from the fundamental ideas of Böhm-Bawerk's capital doctrine." It is interesting to note that he calls his own theory of interest one of "the marginal productivity of capital," thus implying that Böhm-Bawerk's theory is of the productivity class.

The general method of treatment throughout the work is much more abstruse than that of elementary textbooks in English, being on the plane of a discussion for the specialist in theory. The text contains eighteen diagrams, and abounds with mathematical symbols and demonstrations after the manner of Walras.

FRANK A. FETTER.

PRINCETON UNIVERSITY.

Die Berufsvereine. Vols. III, IV, V. Erste Abteilung. *Geschichtliche Entwickelung der Berufsorganizationen der Arbeitnehmer und Arbeitgeber aller Länder.* By W. KULEMANN. Berlin, Leonhard Simion, 1913.—560, 550, 336 pp.

These three weighty volumes are the second and completely revised edition of the author's most useful volumes on *Gewerkschaftsbewegung*. They form a mine of most valuable information otherwise almost entirely inaccessible, and the author has taken the greatest pains to give the

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documents on which his treatment rests, and generally as far as possible to let the documents speak for themselves. In spite of the almost impossible task of covering even in a condensed way the labor movement of the world, such a book gives with tremendous impressiveness a survey of the organization of modern industry to be found nowhere else. The attention of American students of social organization is being increasingly turned to the experience of Europe, and in these volumes we find a fair and impartial, indeed sympathetic, account of the European experiences in industrial organization. The first three volumes deal with Germany and are more detailed than these three, which deal with countries outside of Germany, namely, England, France, Belgium, Holland, Luxemburg, Denmark, Sweden, Norway, Austria, Hungary, Switzerland, Italy, Spain, Russia, Finland, Servia, Bulgaria, Roumania, United States of America, Canada, Argentine, Australia, New Zealand, Japan, and a final word upon international organization.

As might be expected, not all the material on such a world-wide field could be at the disposal of one man, and in the discussion of England and the United States a good deal of recent literature like Common's *Documentary History of American Industrial Society* seems quite unknown to Dr. Kulemann. At the same time the author has been singularly happy in his method and plan, and by his objective treatment and constant use of official statements remains useful and trustworthy so far as he goes. It is a work which every social reference library should possess. Wherever the reviewer has tested it on fields in which he himself has worked, he has found it accurate and impartial, inspiring him with confidence that on the less familiar ground he can trust the treatment to be as solid and objective as possible within such limits. The standpoint of the writer is that of sympathetic confidence in democracy, and although he is without fear of socialistic experiment, his general attitude seems to be that only when monopoly has become inevitable is it well to entrust it to the community. And he evidently regards the organization of both employers and employees as the inevitable outcome of the industrial advance. His trained legal mind with an ample experience upon a High Court bench considers fruitfully the legal aspects of industrial organizations. The American reader cannot fail to pause now and then and wonder whether we have many judicial leaders capable of making labor decisions with such a wealth of social knowledge and sympathy as is here displayed. Naturally there are places where the reader raises a question. It is at least doubtful whether the laborer has been benefited by the tariff, even indirectly (Volume V, page 14). Though on the whole the author's sketch of

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our history must be considered fairly just and impartial, it is still the somewhat conventional account now being seriously questioned by nearly all our later historians. But with great thankfulness to the writer for his amazing industry, and his most useful plan and method, the reviewer commends these volumes to other students of the significance of the world-wide organization of our modern industrial world.

THOMAS C. HALL.

UNION THEOLOGICAL SEMINARY.

The Trade of the World. By JAMES DAVENPORT WHELPLEY. New York, The Century Company, 1913.—viii, 425 pp.

Industrial and Commercial Geography. By J. RUSSELL SMITH. New York, Henry Holt and Company, 1913.—xi, 914 pp.

In the preface to his book, Mr. Whelpley states that no pretense has been made by him to discuss the subject fully or finally, nor was it possible for him to particularize concerning more than a few of the most important or typical countries whose tradings go to make up the enormous total.

The volume will prove of interest both to the general reader and to the man actively engaged in extending our trade in the world's markets. It is mainly the result of first-hand information gathered by a quick and clever, but somewhat superficial and one-sided observer, and it is sketchy in character. As one reads chapter after chapter, one is more and more impressed with the brilliancy of the author's characterization of the different nations, and with the skilful and interesting manner in which he presents his data; but one also recognizes that Mr. Whelpley's facts and figures can not be accepted at their full value, that not only is his economic theory often wrong but also at times his whole vision is obscured, that he has certain preconceived ideas and that these ideas make him occasionally lose the sense of proportion and, what is worse, the sense of justice.

The keynote to the author's views may be found on page 13, where he announces that "the great function of a government in its relation to the material prosperity of the nation is so to adjust its dealings with other governments as to produce the maximum exchange in commodities without detriment to the people as a whole." Thus he enthrones foreign commerce. Dazed by the billions of dollars representing the total value of the world's imports and exports, saturated with the ideas of some of the European statesmen who took deeply to heart Caprivi's

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dictum, "Germany must either export goods or men," Mr. Whelpley has made of international exchange a kind of fetich to satisfy which he is willing to go very far out of his way, and, if possible, lead the American nation with him. He objects to the curbing of "big corporations" in their home activities because a check placed on them at home makes them lose prestige abroad, thus injuring the business of the nation (pages 22–25, 29, 395), and he approves of sales in foreign markets at a cheaper price than in domestic ones, because "there are simple and natural reasons why it is sometimes advisable and profitable" to do so (page 17). The reasons given are those usually advanced by the exporting manufacturers.

Mr. Whelpley reverses the arguments of the supporters of an iron-clad protection who, considering foreign commerce from the angle of importations, decry it as a calamity because it decreases the amount of opportunities for domestic labor. To him foreign commerce means exports. He enthuses over the shipments of merchandise that leave one country, to be consumed in another. These shipments, according to him, represent "a clear gain in every phase of the transaction" (page 394). They mean the payment for material and labor by foreigners. The author quotes an old frontier adage to the effect that "outside money makes the camp." Starting from such premises, he naturally comes to the conclusion that "it is not too much to say that anything in the shape of legislation, or of increased facilities which assists the outward flow of the products of labor, is of unquestioned advantage to the producing nation" (page 394).

It is of interest to note Mr. Whelpley's treatment of the recent Russian-American controversy. Again and again (pages 30, 156, 310–319, 397–399, 411–414) he returns to the trade relations between these two countries and dwells on the abrogation of the commercial treaty by the United States. He ridicules the "passionate" appeals to American pride and the "hysterical" declarations as to the sanctity of the American passport; he insinuates that local politics and sinister influences were responsible for the passage of the measure, and he attempts to create an impression that Russia is one of the best customers of this country. His statistics in support of this last statement will not stand careful examination. On page 313 he tells us that, according to the figures compiled at Washington, the direct exports to Russia in 1909 amounted to about $30,000,000, and that in 1911 they were $52,000,000; he adds that "the truth is that more than twice this value is the real measure of American sales" to the latter country. This, however, does not satisfy him; for, after having stated that over

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one-half of the American trade to Russia is not so credited because it reaches her indirectly, he concludes that "estimates as to the real amount of American sales to Russia vary from $90,000,000 to $190,000,000, and the latter figure is probably nearer the mark" (page 314; also page 413). Thus, with a stroke of his pen, he doubled our exports to Russia and with another increased them fourfold. However, he has performed an even more interesting feat. According to our official statistics, the exports from the United States to Russia in 1911 were not $52,000,000 as indicated by him (pages 314, 410, 413), but less than half of this amount, viz., $24,704,049; thus Mr. Whelpley's probable exports to Russia are eight times larger than the amount of our official sales. In explanation of his position, the author considers our exports of raw cotton. On page 314 he writes that the American export statistics show that less than $7,000,000 of raw cotton is sold to Russia direct; on page 412 the amount dwindles to $3,796,000. It is true that neither figure represents the actual consumption of American cotton by Russian spindles, and that close to $50,000,000 of our cotton finds its way into Russia; but to reason from this that our total exports to that country equal $190,000,000 or $200,000,000 betrays on the part of the otherwise fairly well informed author a remarkable lack of knowledge concerning the size and the nature of Russian imports as well as the sources from which they come.

Professor J. Russell Smith's book is based largely on data gathered from English and American sources: publications of our Department of Agriculture, consular reports, encyclopedias, yearbooks, special treatises, advertising matter of transportation companies, articles in technical, in trade and in popular magazines. It is divided into two parts. The first, by far the larger portion of the book, deals with what the author terms "Industrial Geography." In it Professor Smith reviews our various extractive, collecting, cultivating and manufacturing industries, showing their character, their geographic distribution, their dependence upon environmental conditions. A chapter on our changing environment and another on the place and nature of agriculture precede the treatment of the subject by products. A study is made of what the various countries and regions of the world are yielding and are likely to yield in response to the intelligent activities of men. These activities are always emphasized, and thus, with geography in the background, a comprehensive account is given of the present-day condition of production. A discussion of the expansion of industry and resources concludes the first portion of the book.

To the second part the author gives the name of "Commercial Geog-

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raphy." German writers would have called it more correctly *Verkehrsgeographie*. It consists largely of the description of the principal trade routes and trade terminals.

Throughout the volume, descriptive material is linked with an analysis of data and an attempt is made to trace the phenomena in their causal relationships. The book possesses some of the shortcomings found in the previous writings of Professor Smith, among which a rather slovenly style is not the least conspicuous; but considered as a whole, this is his most thorough and systematic piece of work, and it fills a long felt need for such a publication in the English language.

Certain of the author's statements are open to criticism. Thus on page 884 he declares that "there is a widespread failure to recognize the fact that the balance of trade is eventually paid, paid in goods and paid only in goods." After devoting some space to the elucidation of the relations of money and bullion to the settlement of trade balance, he admits that the keepers of import and export statistics see but a part of the international transactions, and that there are other factors in international payments than mere import and export. As such factors, he mentions interest-money, the expenses of travellers, the payments of international freights and the properties of emigrants; but on the next page he disregards most of these factors and reiterates that "with the exception of the transfer of wealth by the emigrant which is a gift of nation to nation, there is a final balance in the exchange of goods or a promise to balance as shown by stocks, bond, and financial promises." The exchange of services is thus once more eliminated to reappear in a confused form on the following pages, where the writer considers the various stages in the evolution of a national trade balance.

Professor Smith's text is supplemented by maps, charts and graphs, and the book will be found of particular service as a manual for college and university use.

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UNIVERSITY OF ILLINOIS.

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BOOK NOTES

Problems of Power (New York, Charles Scribner's Sons, 1913; xx, 323 pp.) by Wm. Morton Fullerton, sometime correspondent of the *Times*, might more properly be entitled "A Review of World Politics," for the author proceeds to outline with bold, assertive strokes the relations of the world powers. The treatment, prejudiced and superficial, is nevertheless interesting, vigorous and suggestive, revealing the defects as well as the virtues of the newspaper correspondent. It presupposes too wide an information for the general reader, but is not sufficiently profound to influence the specialist. Stated briefly, the theme is that Alsace-Lorraine is and should remain a constant source of irritation between France and Germany. The latter's economic development and continental hegemony has thrown Great Britain into the arms of France. Now the logic of events must transform a cordial understanding into a firm alliance, but before that can be accomplished, England must reorganize her army. France and Germany cannot accept arbitration while the question of Alsace-Lorraine remains unsolved. In this hemisphere the author considers that the United States will take a new position as a world power with the opening of the Panama Canal, and must have an adequate navy, much greater than at present, and should ally itself with France and Great Britain. Canada, having escaped the snare of reciprocity, which would have made it an adjunct of the United States and undermined the British Empire, can now come into still closer relations with its neighbor through common association in the working-out of world policies. In the Far East, Great Britain should have favored China and not Japan, but under present conditions Japan and Russia must be allowed to police Manchuria and Mongolia while Great Britain, France and the United States join in fostering the economic development of the Eastern Provinces. The value of the book is enhanced by the very interesting and pertinent extracts from the speeches of statesman etc. The rapid transformation in international affairs now in progress is likely soon to impair the interest of the treatment; in fact, the recent outbreak in the Balkans has vitiated the discussion of the situation in the Near East.

In the *Monroe Doctrine: An Obsolete Shibboleth* (New Haven, Yale University Press, 1913; ix, 154 pp.), Professor Hiram Bingham, of Yale University, presents an interesting and suggestive study of a

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timely topic. While the author goes too far in asserting that this doctrine is out-worn and useless, yet at the same time he points out a number of lines along which the United States may proceed to secure and maintain better relations with her Latin-American neighbors. Emphasis is here placed on the need of eliminating the mutual misunderstandings of the nations of Latin and Anglo-Saxon origin in the Western Hemisphere, which have for so long served as a hindrance to the development of the best of mutual relations. The suggestion of an alliance with the A. B. C. (Argentine, Brazil, Chile) group, if taken in the sense of a modification of the Monroe doctrine, will be a long step toward a solution of the problem of the relations of the United States with Latin America.

Although Oliver Goldsmith wrote his celebrated histories without having any knowledge of history, he at least knew how to write. Not even that apology can be offered for Mr. Arthur P. Poley's *Federal Systems of the United States and the British Empire* (Boston, Little Brown and Company, 1913; viii, 453 pp.). One feels disposed to say what Samuel Johnson said of the novel *Incognita*—that he would rather praise it than read it. Without extended quotations it would be impossible to give a fair impression of the vagueness and inconsequence which pervade the book. Statements are made which, even to those familiar with the subject, convey no intelligible meaning. We are told that the Canadian constitution "operates over a far larger area of government than the constitution of the United States"; that the absence of a national budget in this country is "apparently due to the large local taxing powers of the states"; that "a state cannot exclude a citizen who has been adopted by the United States, but they (*sic*) can adopt him upon easier terms than those imposed by Congress." No doubt some of these obscurities are due to the fact that Mr. Poley's information is exceedingly limited and evidently acquired for the occasion. A failure to notice recent changes, such as the creation of the Department of Labor in the federal government or the abolition of the circuit courts, might readily be overlooked; but misstatements are so numerous and so glaring that the book cannot be used profitably for any purpose. The brief discussion of congressional finance (page 94) is grotesque. Consider, too, this singular account of the Oregon system of electing United States senators (page 48):

> In practice a candidate for the Senate is now frequently chosen indirectly by the popular vote, through the practice adopted of submitting the candidate's claims to party conventions, where they meet to choose candidates

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for the state legislatures. The candidate for the Senate whose claim receives most support at the convention obtains his party's influence, when the time comes for his legislature to choose a senator, because future members of the state legislature have beforehand pledged themselves to his support.

It is also something of a novelty to learn that, following the precedent set in the United States, the Canadian constitution adopted the separation of powers; or that the Union of South Africa is a federation. The index, considered worthy of mention in the preface, is worthless. Although 145 pages of the text are devoted to the United States, only one reference appears under that heading in the index; only five references under "Canada." But such important subjects as the Achaian League and the Amphictyonic Council receive the attention they deserve.

La Follette's Autobiography (Madison, The Robert M. La Follette Company, 1913; xii, 807 pp.) is in some respects disappointing. Written originally for magazine publication in the presidential year and for the purpose "of mapping out the whole field of conflict and exposing the real character of the enemy," it has all the features of a campaign document. The author represents himself, and perhaps not without justice, as the head and front of the Progressive movement, vindicating his leadership in a somewhat rancorous attack upon Mr. Roosevelt spread over more than a third of the text. The analysis of Mr. Roosevelt's conduct before the announcement of his candidacy and during the Chicago convention is as unsparing as Macaulay's denunciation of Barère. It is delicately implied that, since neither of the leading candidates could legitimately claim a majority of the convention delegates, trickery and fraud alone prevented the nomination of a gentleman from Wisconsin. The earlier part of the volume is of more permanent interest; one might wish that the narrative had gone into greater detail. The career of Senator La Follette from the time he became district attorney of Dane County though opposed by the party machine—a lad of twenty-five fresh from the law school—exhibits remarkable qualities of force and courage. The reminiscences of living politicians are commonly superficial and colorless; Senator Cullom and Senator Platt told us only the things we knew. But Senator La Follette's volume is an important military treatise intended to expose "the real character of the enemy," and those who wish to learn something of the shadier practices of party politics (in the pre-Progressive age) will find illumination in its pages. The conditions which prevailed in Congress and in the Wisconsin legislature are described

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without overemphasis and by no means academically. Nowhere else are the methods of the lobby or the procedure of committees presented in a more graphic way. With so long an experience in politics, however, Mr. La Follette understands that where a general scheme of operations is carried out the individual must not be judged by arbitrary standards. Thus he says of Senator Sawyer, who was alleged to prefer the initial P. because he could not spell Philetus:

> I always thought that Sawyer's methods did not violate his conscience; he regarded money as properly the chief influence in politics. Whenever it was necessary I believe that he bought men as he bought saw-logs. . . . He believed quite simply that railroad corporations and lumber companies, as benefactors to the country, should be given unlimited grants of public lands, allowed to charge all the traffic could bear, and that anything that interfered with the profits of business was akin to treason.

The election law of New York as compiled for distribution by the secretary of state is hardly a satisfying document. Subject to constant overhauling by the legislature without any attempt to harmonize the various parts, it is apt to puzzle the inquisitive elector and leave him a good many doubts still unsettled. Some crimes respecting the elective franchise for instance, he will find described here and there in the law; for others he will look in vain. Of course we have never been led to expect from our elected state administrators in the East anything more than a compliance with the mandatory duties laid upon them. In his *Treatise on the New York Laws relating to Elections* (New York, Baker, Voorhis and Company, 1913; xix, 204 pp.), however, Mr. J. G. Saxe has taken a comprehensive view of the subject, having included, though sometimes with regrettable brevity, everything directly bearing upon it. The little volume should commend itself, not only to the plain citizen, but also to the election official and the lawyer. Exact references to the statutes are everywhere given; numerous cases are citied. Unfortunately, in view of recent legislation, a considerable amount of revision is already necessary. It might be remarked that when Mr. Saxe gets a a little off his immediate theme, he is not always illuminating or sound. Discoursing of the primary, for instance, he mistakes the meaning of the word "state-wide."

Ostrogorski has published a new edition of his *La Democratie et l'organisation des partis politiques* under the title of *La Démocratie et les partis politiques* (Paris, Calmann-Levy, 1912; xvi, 728 pp.). It reviews the development of party rule and its relation to democratic government during the last ten years, since the appearance of his first

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book. The new edition also contains a mass of new material, for which space is provided by the elision of much in the earlier work which was of secondary importance.

"From the time of Palgrave onwards, historians, both English and foreign, have discovered analogies between Frankish and Anglo-Saxon institutions. . . . Has one country borrowed from the other, or are the features they have in common part of their inheritance from a distant past, or, again, are the resemblances merely coincidences resulting from different processes?" Such are the questions which have suggested a short but scholarly study by Miss Helen M. Cam, entitled *Local Government in Francia and England* (London, University of London Press, 1912; x, 156 pp.). The work is necessarily comparative in method. But the two sets of institutions are separated chronologically by a century. It is from the system of Charles the Great, says the author, that a foreigner would draw inspiration, but materials are wanting for a description of English institutions before the time of Alfred. Her concern, therefore, is with the Francia of Charles and the England, or rather Wessex, of Alfred. Miss Cam shows that there was a close and continuous connection between the two countries from the eighth to the tenth centuries, especially in ecclesiastical affairs, and that borrowing was possible. But her conclusion is that positive evidence of borrowing is almost wholly lacking. Striking analogies in institutions are to be found in all the Germanic codes, and the common origin of the two sets of institutions is sufficient to explain most, if not all, of the similarities between Frankish and Anglo-Saxon local government.

It is gratifying to note that so great has been the demand for John W. Salmond's *Jurisprudence* (London, Stevens and Hayes, 1913; xiv, 511 pp.) that a fourth edition has become necessary. The fourth edition is a reprint of the third which appeared in 1910. The first edition was reviewed and the second noted in this QUARTERLY: vol. xviii, pp. 699–702; vol. xxii, pp. 575, 576.

The laudable undertaking of the Association of American Law Schools, to give English readers, by means of select translations, a small working library of continental European legal history, has been widely noticed and gratefully welcomed. Of the eleven volumes promised by the editorial committee in its prospectus of 1911, four have already been published (Boston; Little, Brown and Company). The first of these, *A General Survey of Events, Sources, Persons and Movements* (1912; lii, 754 pp.), is made up of selections from a dozen authors. It deals with what continental writers call the "external"

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history of the law, not with single legal institutions. The volume does not present a consecutive outline of the continental movement as a whole: six-sevenths of it is devoted to the development of the law in different parts of western Europe—Italy, France, Germany etc. For this method of presentation the editors may fairly plead extenuating circumstances. In spite of the essential unity of West-European continental legal history—in spite of the fact that there was, properly speaking, no national law in any part of Europe until modern times—it is unfortunately true that no general history of European law has yet been written. What we have are histories of the European movements in each of the territories which have become national states and of the principal bodies of general medieval law—ecclesiastical, feudal and commercial. There is also a considerable literature dealing with the revived study and reception of the law-books of Justinian—a movement which gave to all Europe a substantially uniform set of legal notions and to the greater part of Europe a fourth and subsidiary body of general law. From these special histories, however, something more like a general survey might have been constructed. To European commercial law are devoted only a few scattered pages. Other European developments, which are more adequately noticed, might have been made clearer by a different arrangement. For example: the Visigothic legislation, described in pages 594–601, really belongs in the editors' second period (pages 23 *et seq.*) with Lombard and Frank law. The canon law, which should have been set just before or just after the feudal law, is scantly treated—apparently as a sort of afterthought—at the end of the volume. The sections dealing with the renascence and reception of the Roman law in different countries might advantageously have been brought together. The same may be said of the scattered passages dealing with the modern codifications which have at last created national legal systems. As it stands, however, the volume is of the greatest value: not merely because it is the only single book in the field, but because the material presented is taken from modern works of the first rank.

More distinctly European in its structure is Volume II, *Great Jurists of the World* (1914: xxxii, 607 pp.). It reaches beyond the field of the other volumes, in that it includes three jurists of the ancient Roman world and six Englishmen. Most of the articles had previously appeared in the *Journal of Comparative Legislation*, and the volume appears under the special editorship of Sir John Macdonald and Edward Manson, secretary of the Society of Comparative Legislation. The editorial claim, that these sketches of single jurists "may be a help to a descrip-

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tion of the great movements of jurisprudence" (page xxi), is amply borne out by the sketches themselves, which in many instances show us the legal environment in which the jurists worked. In the last essay, on Jhering, mention is indeed made of his article on "Culpa in contrahendo," but no hint is given of the brilliant constructive theory therein set forth or of the extent to which this theory has been adopted in the German civil code.

Volume III, *History of French Private Law* (1912; xlviii, 922 pp.), consists of Brissaud's "internal" history of the French law of family and of property, the same author's "external" history having been utilized in the *General Survey*. The first 39 pages present a comparative study of the beginnings of European law; the rest of the volume deals with the development of French institutions and rules. In French law, however, there is perhaps a more equal blend of Germanic and Romanic elements than in any other modern system; and as Brissaud is careful to trace each legal rule to its roots, and to show the effect of ecclesiastical, feudal and commercial influences, the volume forms an admirable basis for the study of continental private law.

Volume V (the fourth volume has not yet been published) is entitled *A History of Continental Criminal Procedure* (1913; xlv, 640 pp.). It consists almost entirely of Esmein's history of French criminal procedure; but the broader title is justified in part by Esmein's own treatment of his theme, in part by the addition of introductory and concluding chapters and appendices, drawn from the works of Garraud and Mittermaier, which deal with Roman and early German procedure, with the development of this branch of the law in other countries since 1800, with the literature of the subject and with the history of the law of evidence. Each of the volumes of the series contains introductions, not only by the editors, but by other writers who are always worth reading. In the volumes above noticed there are, for example, introductions by Justice O. W. Holmes and by Professors Edward Jenks and W. S. Holdsworth. It should be noted, also, that the sections on Dutch legal history, in the *General Survey*, were written especially for this volume, and in English, by Professor J. A. van Hamel of the University of Amsterdam. The translations, which for the most part are excellent, have been made by a number of American lawyers. The greater part of Volume I is translated by Mr. F. S. Philbrick, of Washington, D. C., and by Professor Wigmore, chairman of the editorial committee. The Brissaud material (parts iii and ix of Volume I and the entire third volume) is translated by Mr. Rapelje Howell, and Esmein's history by Mr. John Simpson, both of the New York Bar. One good result that

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may be anticipated from the series is the correction of the miscellaneous misinformation that has been diffused by American books on historical jurisprudence.

It requires no small effort to bring within the compass of one brief volume the history of South America. Mr. W. H. Koebel in *South America* (London, Adam and Charles Black, 1913, x, 298 pp.) has succeeded remarkably well in this task of "putting in an essentially modern and readable form the story of the growth and development" of the southern half of the Western Hemisphere. The general proportions of the book are excellent, the first half being devoted to the colonial period, and the second to the wars of independence and the national development of the countries. The author is to be commended on avoiding over-emphasis on the period of discovery. However he has allowed a few countries—Brazil, Paraguay, Argentine and Chile—to occupy the bulk of the portion devoted to the national period. Venezuela, Ecuador and Columbia are dismissed with a few pages, while the Guianas are not even mentioned. The scope of the work does not call for extensive original investigation, but rather the setting forth of the salient features of the history of South America. These facts are given in a pleasing and popular style, interspersed with many a dramatic little episode for which the author seems to have a fondness. The volume is marred by a few errors of fact, which might easily have been eliminated, and it has a little too much of the Anglo-Saxon spirit of general condemnation of the Spanish colonial régime. The illustrations are excellent, those of the first half of the volume being reproductions of cuts from works of the seventeenth and eighteenth centuries and those of the latter half being largely portraits of the leading characters of South American countries.

In view of the increasing interest in Latin America and on account of the lack of readable and reliable books dealing with our southern neighbors, the South American Series (which, because of the inclusion of Mexico, should be called Latin American), edited by Martin Hume, is a very welcome addition to the literature on these countries. These volumes form an excellent and exceedingly useful series of treatises, descriptive of each nation, its history, its geography, its people and their life and development, and travel notes. Each work has a profusion of fine illustrations, too often, however, placed without any reference to the text. The volumes by Mr. C. Reginald Enock on *Mexico* (London, T. Fisher Unwin, 1910; xxxvi, 362 pp.) and *Peru* (London, T. Fisher Unwin, 1910; xxxii, 320 pp.) are the best, as the author possesses a wealth of information about each country and

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its people. In the volume on Peru about one-third treats of the history, in which a great amount of space is devoted to the Chilean war. Four chapters discuss the social system, giving an admirable account of the people and the customs of the various regions. Other chapters treat of the physical features, natural history, means of communication, agricultural and natural products, mineral wealth, and financial, industrial and commercial conditions. The volume on Mexico begins with an interesting general descriptive chapter. The Indians and their life and civilization are treated. Of the part dealing with the history, half is devoted to the two years of the Spanish conquest, while the remainder treats of the colonial period and the Republic. Other chapters describe the physical conditions, the people, their life and institutions, the natural resources and industries.

The volume on *Brazil* (London, T. Fisher Unwin, 1911; 388 pp.), by Pierre Denis, is a translation of a book of travel originally written in French, with the addition of a brief historical sketch written by the translator and a chapter on "Mineral Resources, Trade and Commerce," by Dawson A. Vindin. Politics and economic conditions are treated, but the bulk of the book deals with the agricultural conditions and colonization. A chapter on the "Valorisation of coffee" explains fully this unique governmental experiment undertaken for the purpose of maintaining the price of coffee.

In *Venezuela* (New York, Charles Scribner's Sons, 1912; 320 pp.) Leonard V. Dalton has given an interesting traveler's account of the country and its history. The bulk of the volume is made up of travel notes regarding all parts of the country that may be visited. The natural scenery and the customs of the people, the natural resources and productions, the industries and the development of the nation are fully described. A concluding chapter is entitled "The future of Venezuela," while the appendices contain the facts regarding commerce and governmental finances.

The volume on *Argentina* (New York, Charles Scribner's Sons, 1910; xxviii, 308 pp.), by W. A. Hirst, gives a survey of the country and its people, but has the appearance of a book written by a person who never saw the country and thus lacks that essential touch of one who has been there. Even the photographs for the illustrations were loaned by various railways and other commercial enterprises.

To present within the limits of three hundred pages the political history of England from the earliest to the most recent times is the task essayed in *A Handbook in Outline of the Political History of England to 1913 Chronologically Arranged* by Arthur H. Dyke Acland

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and Cyril Ransome (New York, Longmans, Green and Company, 1913; xii, 392 pp.), a new edition of which has just appeared. The authors have attempted to include every political event of significance from "B. C. 55, Caesar's invasion of Britain," to "A. D. 1913, May 30, Peace signed at London between Turkey and the Balkan Allies." Nothing original is claimed for the book except the arrangement. The material is presented in four parallel columns, headed as follows: Notes, Foreign and Colonial, Prime Ministers and English. In the column of notes is to be found much valuable material including abstracts of the more important acts of Parliament. A number of summaries and a very good index is appended. The book is, of course, much less comprehensive than Ploetz's *Epitome* or Hilprin's *Historical Reference Book*. In general make-up it resembles Hassall's *European History Chronologically Arranged*. The book would be found useful by every one except the man who has the details of English history so well in mind that he never feels the need for an historical reference book. This amounts to saying that it is a little book which few can afford entirely to despise.

Peter Wiernik's *History of the Jews in America* (New York, Jewish Press Publishing Co., 1912; xiii, 449 pp.) is a history of Jews in both Americas since the earliest days down to 1910. The author is gratified that it is "the first of its kind in this complete form," but lays no claim to "original investigations" or to "learned disquisition." The book is intended for the general reader and is based on second-hand studies, largely on the publications of the American Jewish Historical Society. It makes somewhat tedious reading. There is a wearisome repetition of narrative about the formation of synagogues, purchase of cemeteries, persecutions of Jews here and there, and of biography. The author has no historical perspective either of past or future. In part this may be due to his point of view that the Jews are merely a religious community, but it is evidently also the result of insufficient historical training which is betrayed in many a naïve passage of a quasi-general character. Mr. Wiernik makes no attempt to penetrate into the state of mind of his people at the various epochs he describes. Besides, he seems to be but a recent convert to the art of writing English and commits grammatical blunders of a rather grave nature. The book may serve, however, as a source of ready information on facts and dates relating to the past of the American Jews.

In the preface to his *Development of American Nationality* (New York, The American Book Company, 1913; xxxix, 535 pp.) Professor Carl Russell Fish says that his "central point of view has been the

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political, with the idea that the American people have expressed themselves more fully in their political life than elsewhere and more so than has been the case with most other nations." Economic, social, intellectual and moral phenomena are treated as contributing and clarifying factors. Somewhat more attention is paid to industrial and social changes and conditions and to the growth of governmental activities than has been the case in most of our text-books, and this feature of the book is to be commended. But in a volume of 535 pages on the history of the United States since the Revolution it is difficult to defend an apportionment of space which allots only 82 pages to the period since Reconstruction. Professor Fish has found no more to say about the administrations of Roosevelt and Taft than about that of Van Buren. This does not argue a sound historical perspective in a text-book which professes to follow the "developmental" interpretation of history. In many instances the author has been careless and inaccurate in referring to book titles.

Professor Herman Levy, of the University of Heidelberg, has long been favorably known in America. His American friends will welcome therefore an English translation that has now appeared, under the title *Economic Liberalism* (London, Macmillan and Company, 1913; xi, 124 pp.) of his interesting book, published first in Germany, 1902, dealing with the foundations of economic liberalism in England. The work is full of interesting and careful analysis of the development of English economic liberalism, but its scope is much broader than the title would lead one to suppose. It is an interpretation of the English national character.

Mr. Francis George Heath has done much painstaking research for his new volume on *British Rural Life and Labor* (London, P. S. King and Son, 1911; xi, 318 pp.). He has availed himself freely of board of trade reports and reports of royal commissions, and these he has supplemented by wide extended personal investigation. Of other literature concerning English land problems he seems to have small knowledge, and he gives no indication of having made any study of the history of the question. Mr. Heath gives in detail the wages paid to farm laborers in all parts of the British Isles, with full particulars concerning any privileges or allowances that may be considered as constituting additions to wages. He has taken much trouble to ascertain the dietaries of the families of laborers and the proportion of income spent on rent, food and clothing. The second half of the volume is occupied by a résumé of Mr. Heath's earlier books on the British Peasant, which were published in 1873 and 1880. The reader is thus enabled to get

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some idea of the progress which has been made in the last forty years, and to realize that wages of rural laborers, low as may seem their present level of from fourteen to twenty shillings a week, are considerably higher than they were in 1872, when the range was from nine to thirteen shillings. The most recent of Mr. Heath's information relates to the year 1910, and there is internal evidence that the first half of this volume —the chapters describing modern conditions—have been long in preparation, and are consequently already getting out of date. It is unfortunate that Mr. Heath has failed to state the dates to which the various tables refer. Even when quoting board of trade reports, he gives neither the date nor the number of the report, and consequently much of the value of the information is lost. Mr. Heath's knowledge of recent legislation affecting the land is very imperfect. He confuses small holdings with allotments, and while the Small Holdings Act of 1907 may have been passed after he had written the chapters referring to allotments, there is no trace in his pages of any knowledge even of the provisions of the Allotments Act of 1887.

Economics as the Basis of Living Ethics, by John G. Murdoch (Troy, N. Y., Allen Book and Printing Company, 1913; x, 373, vi pp.), is a book which deserves the attention of the economist. It is an effort to evaluate contemporary economic theory and the ethical theory of half a century ago from the standpoints (*a*) of the economic interpretation of history and (*b*) of social psychology. As a contribution to ethical theory it is of little significance, because it attacks doctrines already largely given up by the students of ethics of today. But as an exposition and critique of the ethical implications of economic theory it has real significance. There is much acumen shown also in the criticism of certain economic doctrines considered apart from their ethical bearings, as the utility theory of value and the "Austrian-Yale theory of interest." On the other hand, the author has managed completely to misunderstand Professor Clark's theories at important points (page 77 *et seq.*), and his "arithmetical refutation," based on arbitrarily chosen figures, represents a hopeless confusion. In general, there is a great deal of misinterpretation of writers on economic theory. Mr. Murdoch's "economic interpretation" of history is a liberal one, which allows large play to moral and legal factors.

After a lapse of eleven years there appears a new edition of Christian Cornélissen's *Théorie de la valeur, avec une réfutation des théories de Rodbertus, Karl Marx, Stanley Jevons and Boehm-Bawerk* (Paris, Giard and Brière, 1913; 480 pp.). The first edition of this work was commented on in the POLITICAL SCIENCE QUARTERLY in 1909 (volume

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xxiv, page 712) in a review of the author's book on wages. The present edition, although declared to be entirely revised, has made but slight changes in the theory of the earlier edition, which it may be noted voiced the objections of the author to both the cost and the utility theories of value and which made an attempt to combine the two views in a so-called theory of market price. The author is an acute thinker whose criticisms are often subtle and well worth considering.

So wide-spread has been the interest aroused by Professor Fisher's *Purchasing Power of Money* that a reprint had to be issued within less than a year of its first publication, and a revised edition (within less than two years). (New York, The Macmillan Company, 1913; xxiv, 503 pp.). Aside from corrections of occasional misprints, the chief changes in this new issue consist of the addition of statistical data for 1910, 1911, and 1912, and of an appendix on "standardizing the dollar." On the other hand, the index has been omitted. With characteristic candor Professor Fisher expresses regret that the difficulty of altering plates has prevented him from taking advantage of certain criticisms of the first edition by Mrs. M. E. England and Mr. Keynes. It is to be hoped that the demand for this revision will be great enough to wear out the plates and give Professor Fisher occasion to issue a third edition just to his mind.

Professor E. S. Bogardus of the University of Southern California has outlined *An Introduction to the Social Sciences* (Published by the University, 1913; 206 pp.) which illustrates the possibilities of a general undergraduate course in social science. The outline covers much of the preliminary ground of sociology, economics and social economy, dipping here and then into many of the problems which arise in modern life. Conservation, sanitation, eugenics, agriculture, monopolies, legislation and social adjustment, the socializing power of Christianity, and education—these are but a few of the topics which Dr. Bogardus has woven into an orderly and interesting syllabus. With the exception of the introduction there is no text. The matter is entirely subject headings and bibliography, as, for example:

> Section 34. Conservation of the Child. (1) "Child labor" usually refers to manufacturing rather than to agriculture. [With four subheads.] (2) Things are not really cheap because they cost little money. [With five subheads.] (3) Child labor is a process of mind stunting. [With three subheads.] (4) Child labor is demoralizing. [With five subheads. (5) Child labor helps to destroy family life. [With three subheads.]

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The bibliography is made up largely of secondary and tertiary sources, and often the views expressed seem to be somewhat one-sided. In no place, for example, in the section quoted, are the obvious economic advantages of an inexpensive and thoroughly obedient labor force, such as children provide, more than implied.

When a book bears the title *The Advancement of Industry*, one does not expect it to be a treatment of problems in India. But the book which Henry Hemantakumar Ghosh has written about the conditions of the industrial awakening of India (Calcutta, R. Cambray and Company, 1910; ix, 222 pp.) is an interesting story of the change from most primitive to modern conditions. Its most interesting point, however, to one not directly concerned with the practical problem of the uplifting of India today, is the statement of how religious ideals cut in upon the economic development of the earlier centuries. There is more suggestion in the few pages devoted to this theme than the author himself may realize. The question of the possibilities of secularization through industrial advance is not the least important for the future of India. Economics is no respecter of castes, and industrialism in such a setting is the militant side of western rationalism. The author is one of those sincere and earnest apostles of the craftsman's arts who are to be found from time to time among the social workers. His outlook is enlightened, his services to the cause of the moral and social betterment of his people considerable. The book tells a story of great endeavor in a field of fundamental importance. It is significant that even the Orient is turning out social saints as well as religious ones.

It would seem to be a bold departure to print an encyclopædia without having the titles of articles printed at the top of the pages in the book. But in *An Encylopaedia of Industrialism* (London, Thomas Nelson and Sons, n. d.; 543 pp.) one may turn to page 282 and half way down the page find in heavy type this heading: "3. Belgium and Netherlands." By turning back to page 267 one can find that the main article is on Housing. And as the book has no alphabetical list of the articles in it, but only an index to all points covered, it is not easy to find things, nor to discover the scope of the work. A preface by Arthur Shadwell indicates that the encyclopædia intends to discuss, from an objective point of view, some of the more important phases of the industrial movement of the last one hundred and fifty years. The list of contributors is a distinguished one, including W. J. Ashley, A. L. Bowley, S. J. Chapman, W. T. Layton, J. S. Nicholson, Philip Snowden, Henry Vivian and others. The articles do not seem to be chosen with any definite aim, though taken singly they are good and thorough

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reviews of the simpler aspects of the subject under consideration. For example, Professor Bowley contributes an article on wages which deals with definitions, the theory of wages, wage statistics, and which gives a bibliography. This article is of chief interest to the political economist. A member of the Institute of Mechanical Engineers, W. N. Twelvetrees contributes an article on factory construction. This gives small cuts of certain types of construction, fireproofing etc. While from the engineering or practical point of view the article is too foreshortened to be useful, it may perhaps assist the economist in the attempt to gain an inkling of a few of the practical problems facing the factory builder or owner.

Under the title *Economisti del cinque e seicento* (Bari, Gius, Laterza and Figei, 1913; 400 pp.), Professor Augusto Graziani reprints two important early works—the *Alitinonfo* of Scaruffi, and the *Breve Trattato* of Antonio Serra, originally published in 1613, and well known as the first comprehensive statement of the Mercantilist theory in any language. The two together make a pleasing and admirably printed volume which will be of great convenience to historians of economic theory.

For several years a conflict of opinion has been raging between the historians and the economists as to the proper interpretation of Aristotle's theory of economic life. Dr. Johannes Kinkel endeavors to allay this conflict in a monograph entitled *Die socialökonomischen Grundlagen der Staats- und Wirtschaftslehren von Aristoteles* (Leipzig, Duncker and Humblot, 1911; xvi, 146 pp.). In its essentials Dr. Kinkel's work follows rather closely the French investigations of Francotte and Guiraud, both of which have been reviewed in preceding numbers of this QUARTERLY, (volume xxvii, page 184 and volume xxvii, page 183). His own position is that the economic revolution of the sixth and fifth centuries brought Greece to the first phase of the capitalist régime known as the domestic system and that Aristotle's views were really a reflex of the economic environment although containing also a reaction toward the original system of the οἶκος. Dr. Kinkel has a good command of the recent studies on the subject and devotes his final chapter to a critical survey of the entire literature.

Professor W. E. Biermann, the author of the *Life of Karl Marlo*, which was recently reviewed in this QUARTERLY (volume xxv, page 564), now fulfills the promise made in his earlier work by editing a series of unpublished manuscripts under the title of *Aus Karl Georg Winkelblechs (Karl Marlo) literarischem Nachlass* (Leipzig, A. Deichert, 1911; 163 pp.). They consist of a series of essays, some of which

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were the early chapters of a new work that Marlo had in contemplation, while the others deal with the practical application of some of the theories found in his *System of World Economics*. In the forthcoming third and concluding volume of his biography, Professor Biermann expects to give a detailed analysis and criticism of these chapters.

In volume xxvii, page 570 of this QUARTERLY there were noted the volumes published up to that time in the *Collection des economistes et des reformateurs sociaux de la France*. Since 1911 no less than six additional numbers have appeared, comprising the important works of Dupont de Nemours, with an introduction by Professor Depitre; of Graslin, with an introduction by Professor Dubois; of Petit, with an introduction by Professor Girault, of Baudeau; with an introduction by Professor Dubois; and of Moheau, with an introduction by Professor Gonnard. The most recent of these reprints is the two-volume work by Dupin, *Œconomiques* (Paris, Marcel Rivière and Company, 1913; lxxv, xvi, 301 pp.), with an introduction by Professor Aucuy. Dupin's volume was originally published in 1745 and is now exceedingly rare. Only twelve or fifteen copies survived the author's almost complete destruction of the first edition, and only three extant copies are known; so that the editors are here making a real contribution to the history of economic thought. Dupin was one of the famous *fermiers généraux* and his work, like almost all those of the period, is strongly tinged with Mercantilist ideas. The technical knowledge of the author is seen to advantage in not a few of his discussions on finance and trade. If the promises of the editors are fulfilled in the future as well as they have been kept in the past, this collection of French economists will soon be indispensable to every university library.

The sixth and seventh numbers of the Vienna Studies in Economics, edited by Professor Grünberg, deal with the history of economic thought. Dr. Karl Koepp in *Das Verhältnis der Mehrwerttheorien von Karl Marx und Thomas Hodgskin* (Vienna, Carl Konegen, 1911; vii, 289 pp.) undertakes an independent investigation of the question as to how far Karl Marx was indebted to Hodgskin for his theory of surplus value. His conclusions are in all essentials the same as those reached a few years ago by Halévy in his monograph on Hodgskin. Much of what Karl Marx wrote is indeed to be found *in nuce* in Hodgskin, but in not a few respects the theories differ, and to call Marx simply a follower of Hodgskin is, of course, absurd.

The other monograph by Dr. Ernst Ladenthin also deals with the question of genetic ideas, and is entitled *Zur Entwickelung der nationalökonomischen Ansichten Fr. Lists von 1820–1825* (Vienna, Carl Kon-

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egen, 1912; xxv, 126 pp.). Dr. Ladenthin takes up the problem as to whether List really owes his fundamental doctrine to Raymond, and he comes to the conclusion that it is not to Raymond but to Chaptal and Ferrier, whom List studied before he went to America, that the real obligation must be declared due.

The English have such a refreshing attitude towards the printed pamphlet that it is not surprising to find two very different types of leaflets dealing with the question of wages. One is a statistical study of *The History of Wages in the Cotton Trade During the Past Hundred Years* by George Henry Wood, a medalist of the Royal Statistical Society (London, Sherratt and Hughes, 1910; ii, 162 pp.). It is scientific, and a concrete review of the facts relating to wages in the cotton industry, and little else.

The other is a labor pamphlet written in the interest of a minimum wage for miners, and entitled *Profits and Wages in the British Coal Trade (1898–1910)* by Thomas Richardson, M. P., and John A. Walbank, F. C. A., (Newcastle-upon Tyne, The N. A. C. C., 1912; 96 pp.). Mr. Walbank has gathered the statistics, while the member of parliament does the arguing. The conclusion is that if, in 1900, Parliament had decreed that all wage workers receiving less than 30 shillings a week should have a yearly increment which would bring them up to that standard in ten years' time, at the end of that ten years, labor would have received $430,000,000 more in wages, while the rest of the community would still have gained $695,000,000 in income. Actually labor gained about $30,000,000 during the ten years, according to the pamphlet, leaving $1,095,000,000 for the rest of the community.

Another contribution to the recently fast-growing studies in English economic history is the work of John R. Elder on *The Royal Fishery Companies of the Seventeenth Century* (Glasgow, James Maclehose and Sons, 1912; vi, 136 pp.). The materials for the study were found in the libraries of Aberdeen and Edinburgh as well as in the British Museum and Record Office, and the publication of the book was made possible by the Carnegie trustees. The Dutch, as is well known, held the commanding position in the North Sea during the seventeenth century, and the British government found it no light task to interest English and Scotch noblemen, gentlemen of private means, merchants and fishermen, in an enterprise which had for its ultimate object the ousting of the Dutch from the fishing trade. In a series of chapters the detailed history of this attempt is given from the time of James I until the formation of the Royal Fishery Company under Charles II.

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An appendix contains a variety of interesting details affecting the herring busse trade and the fishing fleet.

A rather large task was undertaken by Professor William E. Rappard when he set out to study the economic basis of modern Swiss democracy. Owing to the fact that he had in the meantime accepted a position at Harvard University, M. Rappard decided to confine himself for the present to a single phase of this movement, and under the title of *Le Facteur économique dans l'avènement de la démocratie moderne en Suisse, 1. L'Agriculture à la fin de l'ancien régime* (Geneva, Georg and Company, 1912; 235 pp.), he has studied the agricultural conditions in Switzerland at the end of the eighteenth century. His tentative conclusions are that this period marks the transition from agriculture as an occupation to agriculture as a business. The peasant, largely under the influence of the incipient industrial revolution, looked to profits in the larger market and thus underwent a psychological change, which reacted upon the economic and political constitution. It was finally the coming of the French invader with the abolition of all feudal differences which converted the Swiss peasant to democracy. In all this there is nothing especially new; but the details are presented in an interesting way. It is to be hoped now that M. Rappard has been recalled to his Genevan home, that he will be able before long to give us the further installments of what promises to be a valuable contribution.

Professor Edgard Depitre, of the University of Lille, who is best known by the valuable introductions he has furnished to reprints of the writings of the eighteenth-century economists, now turns from the history of economic theory to economic history, and discusses in an interesting volume the great contest of the French manufacturers against the importation of Indian calicoes in the seventeenth and eighteenth centuries under the title *La Toile peinte en France au xvii^e^ et au xviii^e^ siècles* (Paris, Marcel Rivière and Company, 1912; xxvi, 271 pp.). Basing himself largely on fresh original material, Professor Depitre gives a clear picture of an economic struggle which was at the time second only in importance to that of the corn trade. He traces in detail the reasons for the original prohibition of 1686 to the downfall of the old system in 1759 and to the temporary reintroduction of the protective régime in 1785. Incidentally we have a lively picture of the wordy warfare in which Gournay, Morellet, Moreau and de Chastellux participated. The book is an exceedingly able and thorough contribution to an important chapter of French economic history.

The further series of the *Mémoires et documents pour servir à*

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l'histoire du commerce et de l'industrie en France published under the direction of Julien Hayem, of which the first series was noted in the POLITICAL SCIENCE QUARTERLY (volume xxvi, page 559), have recently appeared. The second series (Paris, Hachette and Company, 1912; viii, 287 pp.) contains monographs on the silk industry in Provence, on the wine trade in Bourgogne, on the protection against fire in Paris, and on the inspection of industry in Orléans, all of them in the eighteenth century. The third volume (Paris, Hachette and Company, 1913; xii, 322 pp.), to which Professor Depitre furnishes an introduction, includes studies on the cotton industry in Orléans, on the general economic condition of Bas-Limousin, on the Paris markets in the eighteenth century, and on the commercial relations between France and the United States immediately prior and subsequent to the Revolution. Several more volumes are promised. The collection is maintaining its high standard and forms a veritable mine to the student of economic history.

Under the title *The French Revolution of 1848 in its Economic Aspect*, Mr. J. A. R. Marriott has edited two important and rather rare contemporary works. One is Louis Blanc's *Organisation du Travail;* the other Emile Thomas' *Histoire des Ateliers Nationaux* (Oxford, The Clarendon Press, 1913; xcix, 284; 396 pp.). The editor provides to the first volume a critical and historical introduction of some hundred pages, in which he seeks to answer the question as to how far Louis Blanc was really responsible for the national workshops. His conclusion is that while Blanc should not be held responsible for the practical application of his theories, nevertheless the national workshops were the logical consequence of Blanc's doctrine of *droit au travail*. The introduction gives a somewhat detailed account of the disastrous experiment.

A convenient history of socialism in France, written largely from the point of view of the party itself, is to be found in the *Histoire des Partis Socialistes en France* (Paris, Marcel Rivière and Company, 1911, 1912, 1913) published under the direction of Alexandre Zévaès. There are no less than eleven of these volumes, each of about eighty or a hundred pages. They deal with the following topics: The bloody week at Marseilles, the "Guesdists," the "Possibilists," the "Allemanists," the "Blanquists," socialistic unity, the independent socialists, the syndicalist movement, the anarchists, from Babeuf to the Commune, and socialism in 1912. The same publishers have issued a series dealing with present-day problems under the title of *Les Documents du Socialisme*, edited by Deputy Albert Thomas. The ten vol-

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umes of this series, each of them about the same size, cover the following topics: coöperative unity, socialism and industrial concentration, state insurance, socialist civilization, the syndicalists, a socialist catechism, the social democrat in the third Duma, and the ponophysiocratic principle. The writers in this series are better known, including Messrs. Fournière, Bourguin, Andler, Guesde, and Effertz. The various numbers are of very unequal merit, but taken together they afford a good picture of present-day socialism in France.

A comprehensive treatment of the theory of long-time investments, from the mathematical standpoint, is provided by E. B. Skinner's *The Mathematical Theory of Investment* (Boston, Ginn and Company, 1913; x, 245 pp.). Any one familiar with the material provided in this book would be equipped to deal with questions of annuities, amortization, sinking funds, valuation of bonds, interest and interest payments, endowments and insurance. The terms used are those prevalent in actuarial and business practice, and while little of the material is new, what is presented is systematically gathered together in one place, and in such a manner as to be readily serviceable for commercial courses. The book would also be useful to those with funds to invest, who were anxious to understand the principles involved in determining returns. Interest and annuity tables are provided, and the work is treated in such a fashion that progressions and algebra will suffice to make it easily intelligible.

The late Sir Robert Giffen, after retiring from the public service in 1897, undertook the task of writing a popular handbook on *Statistics*, which, having been edited by Mr. Henry Higgs, has recently been published (New York, The Macmillan Company, 1913; xiii, 485 pp.). Although the book, for the most part, deals with the facts of English experience and was written some fifteen years ago, it contains much of permanent value for American readers. Critical judgment, common sense, and wisdom in avoiding the pitfalls of statistics are the most essential qualities in a statistician. These qualities Robert Giffen possessed to an unusual degree, and on this account was well qualified to discuss statistical methods and problems. The work is not meant as a compilation of facts, but suggests why certain classes of facts are collected, how they may be interrogated, and what are some of the dangers of interpretation. The author is not concerned with the question whether statistics is a distinct science, but rather with the scientific methods of compiling and arranging masses of facts in various fields, and with the methods of drawing conclusions from them. Facts may go out of date while aims and methods remain as valuable as before.

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The author impresses upon the reader the wide scope of social and economic statistics and the importance of the records of experience. His discussion begins with population statistics, including emigration and immigration. The statistics of production and trade include imports and exports, agriculture, mineral resources, manufacturing industries, railways, public utilities, finance, prices and wages. Chapters are devoted to statistics of accumulation, to judicial, pauper and educational statistics, and to the data on accidents and insurance. The book closes with a very practical discussion of the essentials in the construction of a statistical table. After all, statistics is as much concerned with making facts intelligible and impressive as it is with gathering the facts. If the discussion at times appears incomplete it must be remembered that the intervening years since it was written have witnessed considerable progress in the gathering and utilization of statistical data.

"Laborious students whose investigations have interested scarcely anyone but themselves have been known to seek comfort in the assertion that truth is valuable for its own sake. I do not believe that this is the case. A great deal is true that is not worth knowing. . . . All history should, I think, have some practical aim." Unless these words of Professor Edwin Cannan were heartily subscribed to by the State Historical Society of Iowa it could not stand sponsor for the Iowa Economic History Series. The practical aim of one of the numbers of this series, E. H. Downey's monograph entitled *History of Work Accident Indemnity in Iowa* (Iowa City, The State Historical Society, 1912; xiii, 337 pp.), seems to have been attained in the passage of the new compensation law of 1913 even before the tardy reviewer found time to note the publication of the volume. The book is a clearly written analysis of the situation in Iowa in regard to this type of social legislation. By a mere statement of the problem and of the experience of other countries in their attempts to solve it, the book furnishes a most forceful argument in favor of the legislation which has been recently adopted.

Child Labor in City Streets is the title of an excellent small book by Edward N. Clopper, Secretary of the National Child Labor Committee for the Mississippi Valley (New York, The Macmillan Company, 1912; x, 280 pp.). The volume, which is in a handy form, and easily readable, deals with a neglected form of child labor, the problem of the newsboy, the bootblack and the peddler. Mr. Clopper of course has an interesting field, and is able to muster a convincing mass of data regarding the unfortunate effect of street work on children. He also

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deprecates the idea that children engaged in street work are doing so on their own account. Often they are hired, whether by a *padrone* or some other, and get even smaller wages than the factory child does. Their hours of work have only recently been the subject of any legislation whatsoever, and in general Mr. Clopper feels that the situation is deplorable. The book is constructive in aim. It closes with a recital of what has been done both in this country and abroad, and points out in clear language reforms which have been tried and proved practical. There is a bibliography at the close of the work.

In view of the present agitation against child labor, we have to signalize as most timely the volume of O. Jocelyn Dunlop on *English Apprenticeship and Child Labour* (New York, The Macmillan Company, 1912; 390 pp.). The subject was suggested to Miss Dunlop by the Webbs, and the author carried on her researches at the London School of Economics on a Cairnes scholarship from Girton College. The volume is marked by the scholarly care to which graduates of the London School of Economics have accustomed us. The early chapters deal with the origin of the system of apprenticeship, technical and industrial training in the Middle Ages, and a comparison of the skilled and unskilled trades. An interesting account is given of the decline of the apprenticeship system and the mutations of child labor in the nineteenth century. A supplementary section by Miss Dunlop and Richard D. Denman, former chairman of the Juvenile Advisory Committee, deals with the modern problem of juvenile labor. The authors recommend four chief reforms: the raising of the school age, the creation of compulsory continuation classes, the further regulation of employment outside of school hours, and the appointment of juvenile advisory committees. It is to be regretted that the date of publication is omitted from most of the books in the otherwise valuable bibliography.

The subject of syndicalism seems to appeal to the imagination of writers as well as to the sympathies of certain portions of the downtrodden proletariat. Twenty-six large pages are required to list the titles on this subject in the little mongraph published by Paul F. Brissenden, entitled *The Launching of the Industrial Workers of the World* (Berkeley, University of California Publications in Economics, vol. iv, no. 1, November 25, 1913; 82 pp.). In the short space of forty-two pages the author describes briefly the various conferences which preceded the convention of 1905, and then in more detail the convention itself in which the I. W. W. was started on its career as an organization. The scope of the pamphlet is narrow, but future bibliographers of the syndicalist movement will do well to include it in even a much shorter list of titles than that furnished by the author himself.

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A book which will receive a hearty welcome from teachers of economics everywhere is the new edition of William Z. Ripley's *Railway Problems* (Boston, Ginn and Company, 1913; xxiv, 830 pp.). This standard volume of readings has been recast to bring it down to date and to accommodate it for use as a supplement to Professor Ripley's *Railways: Rates and Regulations* and *Railways: Finance and Organization*, the latter not yet published. The chapters in the old edition which were from Professor Ripley's own pen have been transferred to his new texts. In the place of these chapters and of some others which have been omitted, new readings have been introduced. Perhaps the most interesting of the new chapters is called "Early American Conditions," taken from Pearson's *An American Railway Builder*. Such recent events as the Minnesota Rate Cases and the Union-Pacific-Southern-Pacific Merger Dissolution receive attention. All in all the book provides a rich collection of fresh and valuable illustrative material.

In a second edition of *How to Analyze Railroad Reports* (New York, Analyses Publishing Company, 1912; 218 pp.), Mr. John Moody has brought his well-known manual down to date. For several years now Moody's *Analysis of Railroad Investments* has been issued annually, and has been of service to investors as well as students. The present volume is virtually an abridgment of the larger work, confining itself, however, to the underlying principles with a few illustrative examples. It deserves its well-earned success.

So many schemes of social regeneration have been launched upon a weary world during the last few decades that we are beginning to greet all new ones with a groan. And so it could almost be wished that Comrade W. G. Barnard had restrained his zeal and had not further harassed us with the necessity of considering a new series of reform proposals that he makes in his book, *Regulation* (Seattle, Regulation Publishing Company, 1913; 124 pp.) He advocates land nationalization, boards for price regulation, for money regulation, for wage regulation, for profits regulation; indeed his proposal seems to involve nothing short of regulation run mad. And the worst of it is that we are promised a magazine as well as some more books on the same theme!

Regulation, Valuation and Depreciation of Public Utilities by Samuel S. Wyer (Columbus, The Sears and Simpson Company, 1913; 313 pp.) is a nicely bound india-paper book, possibly intended for the pocket, dealing with the problems which come up in connection with public utilities. There are various explanatory illustrations in the book,

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some charts giving interesting data, and a useful bibliography. The material, from the engineering standpoint, can be obtained in any standard handbook. The legal possibilities of the book appear to be small. If one is desirous of a definition of good will, or if one is anxious to know that gasoline gas is a mixture of gasoline vapor and air, or if one is troubled by many other possible anxieties of a similar nature, the book should prove extremely valuable.

Students of the history of banking in the United States will find much to interest them in the *History of the Chemical Bank, 1823–1913* (Privately printed, New York, 1913; xiii, 167 pp.). The Chemical Bank started under a typical state charter in the palmy days of the twenties, but its history since then has been one of remarkable success. The volume here noted records this history in a rather self-satisfied but nevertheless interesting way. While the bank and its greatness constitute the important theme throughout the chronicle, there are presented as well many illuminating side-lights on other factors of historical importance.

Dr. Marcel Maurice Fischel attacks in *Le Thaler de Marie-Thérèse* (Paris, Giard and Brière, 1912; xxxi, 208 pp.) the problem of how and why this particular silver dollar should have been the chief medium of exchange throughout the entire northern and central part of Africa after the third quarter of the eighteenth century. Dr. Fischel begins with a study of the economic and political conditions of Austria, showing why Austria differed from the other states which still pursued a Mercantilist policy and maintained the prohibition of the export of precious metals. He finds these reasons in the geographical position of Austria, in its internal politics, with a tendency toward decentralization, and in its general economic inferiority. Up to the middle of the eighteenth century the Spanish *piastre* was the coin most commonly seen in international trade; but when the Spanish market was closed to French commerce, and especially when the contrabrand trade in these coins ceased in 1750, there was a decided scarcity which was now soon relieved by the coinage of the Austrian dollar. It was primarily due to the Bedouin Arabs who utilized this new and silver-white dollar, first for purposes of ornament, that it found its way through a large part of Africa, and successfully resisted for many decades all efforts to dislodge it from its position as the chief medium of exchange. The story is well told and is a contribution to social history as well as to fiscal science.

Many of Germany's prominent men of business are also scholars and writers. Dr. Friedrich Bendixen, director of the Mortgage Bank of

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Hamburg, belongs to this enviable company. In his *Geld und Kapital* (Leipzig, Duncker and Humblot, 1912; 187 pp.) he presents a series of essays dealing with a half-dozen different questions in the field where his interest lies. In general the topics that he discusses are monetary theory, the Reichsbank, the crisis of 1907 and the bank inquiry, Reichsbank policies, land credit and the national capital. The essay of general interest is the first, dealing with monetary theory. The general conclusion here is strongly in support of Knapp's *staatliche* or what we should call the "legal tender" theory. The *staatliche* theory finds a congenial resting-place in modern Germany.

The third volume of the Cornell Studies in History and Political Science is a monograph by Willard Eugene Hotchkiss on *The Judicial Work of the Comptroller of the Treasury* (Ithaca, Cornell University, 1911; xii, 164 pp.). After a statement of the history of the office, we find a careful description of the functions of the comptroller and a comparison with similar functions exercised in France and Germany. The author's conclusion is that the absence of administrative courts in the United States has not prevented the development of a body of administrative law and that the comptroller successfully exercises a part at least of the jurisdiction of the foreign administrative courts.

The President's signature had scarcely been applied to the new tariff bill before treatises began to appear dealing with the income-tax provision. The authors of some of these works seem to be chiefly interested in proving that, although there is not much to be said about a subject, it is quite possible to write large volumes about it. One of the most pretentious of this crop of books is Thomas Gold Frost's *A Treatise on the Federal Income Tax of 1913* (Albany, Mathew Bender and Company, 1913; xii, 242 pp.). By utilizing to the full the resources of both history and prophecy the author was able to present to the public, four days after the act was approved, a volume of nearly two hundred and fifty pages. One interesting feature, and one which fills nearly one-half of the space, is a series of appendices quoting in full the text of every federal law and every amendment thereto ever passed dealing with the subject of income taxation.

In the new edition of his little book entitled *The History of Local Rates in England* (London, P. S. King and Son, 1912; xv, 215 pp.), Professor Edwin Cannan, of the University of London, takes up the interesting question of the value of centralized control over local expenditures through the "grants-in-aid" system. The book has been almost doubled in size by the addition of three new chapters entitled respectively "The Local Ratepayer against the National Taxpayer,"

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"The Equity of Local Rates" and "The Economy of Local Rates." The attitude of the author on this question may be surmised from the chapter titles. He bids those who are surprised at his championship of local rates to "remember that it is impossible to make omelettes without breaking eggs." "No single tax," he contends, "ever raised as much money as local rates do in this country at the present time, and though the grumbling is great in the aggregate, it is probably less per pound sterling raised than the grumbling against any other tax, except perhaps some few which are well concealed from their ultimate payers by being administered in small doses wrapped up in prices." Of the much-discussed problem of expert supervision of agents of central boards, he has this to say: "Doubtless expert opinion is exceedingly valuable. . . . But . . . experience convinces me that the inspectors and departments represented by them have to rely on argument and persuasion, and the less they have absolute power of control the better is the work likely to be performed."

That all taxes rest ultimately upon land values and that the transposition to land of all taxes now levied upon other bases would redound to the benefit not only of the persons exempted but also to the benefit of the landowners themselves is the thesis which John Orr attempts to establish in his *Taxation of Land Values* (London, P. S. King and Son, 1912; x, 116 pp.). This thesis is not new and it cannot be said that Mr. Orr defends it more successfully than some of his predecessors in the rôle. The writings of others are used in a most astonishing way, even Professor Seligman being quoted as authority for the view that all taxes tend to be shifted to land (page 17). The excerpt cited is from *Shifting and Incidence of Taxation*, page 184, which reads: "If we look at the taxable objects from the standpoint of revenue, we have found that there are only two kinds of revenue on which a tax, when once imposed, necessarily remains. These are economic rent and pure profits." Mr. Orr first remarks: "We are not sure about 'pure profits'," and then proceeds to assume that Professor Seligman holds that, because all taxes do not stay where they are put, they shift to the land. Thus even the single-taxer may quote scripture for his purpose.

The discussion of the taxation of unearned increment which is now spreading throughout the European continent has reached Austria. Dr. Réné Perin devotes a monograph to the subject under the title of *Das Problem des unverdienten Wertzuwachses und dessen Besteuerung mit besonderer Rücksicht auf Österreich* (Wien, Manzsche, 1912; xii, 151 pp.). In a series of interesting chapters Dr. Perin seeks to ex-

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plain the distinction between earned and unearned increment and discusses the relation of the latter to the American system of special assessments. He thinks that there is room for a very decided application of both principles to the Austrian fiscal system and works out in some detail the methods of developing them in connection with the Austrian land tax.

The recent important additions to the revenues of the German Empire lend especial timeliness to Egbert Bergemann's *Die Finanzreformversuche im Deutschen Reiche von 1867 bis zur Gegenwart unter Berücksichtigung der Deckung der Wehrvorlagen von 1912* (Göttingen, Vandenhoeck and Ruprecht, 1912; 146 pp.). We find here in convenient form and in small compass a statement of the successive changes that have taken place in the imperial fiscal system since the inception of the empire. Good use is made of the parliamentary debates and of the reports of committees as well as of secondary material. The result is a distinct addition to the literature of the subject.

A few years ago a sensation was caused in Prussia by the attack made on the administration of the Prussian income tax by Dr. Fuisting, one of the leading judges called upon to review the administrative proceedings. Fuisting declared the situation to be intolerable on account of what he called the *Fiscalismus* of the administration. An impartial Austrian official, Dr. Franz Meisel, has now studied the whole question anew and presented his conclusions in a volume entitled *Moral und Technik bei der Veranlagung der preussischen Einkommensteuer* (Leipzig, Duncker and Humblot, 1911; iii, 88 pp.). The author thinks that Fuisting's charges are exaggerated, but he concedes that the Prussian income tax is far from being a success in ascertaining the incomes of the citizens with a tolerable degree of equality. Instead, however, of concluding that the way out of the difficulty is to be sought in the adoption of the English (and American) method of stoppage at source, he maintains that what is needed is a disappearance of the mutual distrust between citizen and administration. This, however, in his opinion can only be brought about by different technical methods on the part of the administration and by a different moral sentiment on the part of the tax-payer. As to how these are to be engendered, however, we are left in the dark.

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